

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CAPPSEALS, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
DIRECT MARKETING CONCEPTS, INC.,)	
ITV DIRECT, INC., DIRECT	)	C.A. No. 05-11907-JLT
FULFILLMENT, LLC, DONALD)	
BARRETT, and ROBERT MAIHOS,)	
)	
Defendants.)	

AFFIDAVIT OF SCOTT SILVERMAN

I, Scott A. Silverman, being duly sworn, do hereby depose and state that:

1. My name is Scott A. Silverman, and I am an associate with the law firm of Gadsby Hannah LLP located in Boston, MA. I am counsel for the Plaintiff, Cappseals, Inc. ("Cappseals"). I submit this Affidavit in Support of Cappseals Motion for Partial Summary Judgment.

2. Attached hereto as Exhibit A is a true and accurate copy of the Court's July 20th, 2005 Memorandum filed in the matter of *ITV Direct, Inc. v. Healthy Solutions, LLC et al*, Civil Action No. 04-10421-JLT (Docket Entry #134).

3. Attached hereto as Exhibit B is a true and accurate copy of the Affidavit of Robert Maihos filed in the matter of *Federal Trade Commission v. Direct Marketing Concepts, Inc. et al*, Civil Action No. 04-11136-GAO (Docket Entry #11).

4. Attached hereto as Exhibit C is a true and accurate copy of the Joint Stipulations of Fact filed in the matter of *ITV Direct, Inc. v. Healthy Solutions, LLC et al*, Civil Action No. 04-10421-JLT (Docket Entry #113).

5. Attached hereto as Exhibit D are true and accurate copies of Purchase Order No. 1101, bates numbered as SH-047; ITV00379 and ITV00324. These documents were all produced in the matter *ITV Direct, Inc. v. Healthy Solutions, LLC et al*, Civil Action No. 04-10421-JLT. The bates number prefix “SH” indicates the document was produced from the records of Healthy Solutions; the bates number prefix “ITV” indicates the document was produced from the records of ITV Direct, Inc. (“ITV”).

6. Attached hereto as Exhibit E are true and accurate copies of Invoices Numbered 21 through 26, bates numbered as ITV00312 through ITV00317.

7. Attached hereto as Exhibit F is a true and accurate copy of an independent accounting report of Direct Marketing Concepts’ (“DMC”) finances relating to its sales of Supreme Greens with MSM. This accounting report was prepared pursuant to Court Order in the matter *Federal Trade Commission v. Direct Marketing Concepts, Inc. et al*, Civil Action No. 04-11136-GAO. The accounting report consists of documents bates numbered as ITV00517 through ITV00567.

8. Attached hereto as Exhibit G is a true and accurate copy of a DMC internal accounting record labeled “find report for all transactions”, bates numbered ITV00291.

9. Attached hereto as Exhibit H is a true and accurate copy of the June 23, 2004 Preliminary Injunction Order as to defendants DMC, ITV and Donald W. Barrett filed in the matter of *Federal Trade Commission v. Direct Marketing Concepts, Inc. et al*, Civil Action No. 04-11136-GAO (Docket Entry #32).

10. Attached hereto as Exhibit I are the relevant portions of ITV's general ledger that was produced during post-judgment discovery in the matter *ITV Direct, Inc. v. Healthy Solutions, LLC et al*, Civil Action No. 04-10421-JLT. The portions of ITV's general ledger are bates numbered ITV00326 through ITV00354.

11. Attached hereto as Exhibit J are true and accurate copies of ITV's May, June, July and August 2005 bank statements also produced during post-judgment discovery in the matter *ITV Direct, Inc. v. Healthy Solutions, LLC et al*, Civil Action No. 04-10421-JLT. These bank statements are bates numbered ITV00165 through ITV00187.

12. Attached hereto as Exhibit K is a true and accurate copy of the relevant portions of the transcript from the August 23, 2004 deposition of Donald Barrett in the matter *ITV Direct, Inc. v. Healthy Solutions, LLC et al*, Civil Action No. 04-10421-JLT.

13. Attached hereto as Exhibit L is a true and accurate copy of the Complaint filed in the matter of *Direct Market Concepts, Inc. et al, v. The Federal Trade Commission*, Civil Action No. 05-11930-GAO (Docket Entry #1).

Sworn to under the pains and penalties of perjury this 10th day of November, 2005.

/s/ Scott A. Silverman
Scott A. Silverman

CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of the foregoing *Affidavit of Scott Silverman* was served on the foregoing attorneys of record pursuant to Fed. R. Civ. P. 5 as follows:

Via electronic notification:

Peter S. Brooks pbrooks@seyfarth.com

Susan W. Gelwick sgelwick@seyfarth.com

Christopher F. Robertson crobertson@seyfarth.com

/s/ Scott A. Silverman

Daniel J. Kelly BBO# 553926

dkelly@ghlaw.com

Scott A. Silverman, BBO #638087

ssilverman@ghlaw.com

Gadsby Hannah LLP

225 Franklin Street

Boston, MA 02110

(617) 345-7000

DATED: November 10, 2005

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CAPPSEALS, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
DIRECT MARKETING CONCEPTS, INC.,)	
ITV DIRECT, INC., DIRECT	)	C.A. No. 05-11907-JLT
FULFILLMENT, LLC, DONALD)	
BARRETT, and ROBERT MAIHOS,)	
)	
Defendants.)	
)	

**AFFIDAVIT OF SCOTT SILVERMAN IN SUPPORT OF CAPPSEALS INC.'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ITV DIRECT, INC.,
Plaintiff,

v.

HEALTHY SOLUTIONS, LLC et al.,
Defendants.

CAPPSEALS, INC.,
Plaintiff-in-Intervention,

v.

HEALTHY SOLUTIONS, LLC, d/b/a
DIRECT BUSINESS CONCEPTS; ITV
DIRECT, INC.; and DIRECT
FULFILLMENT, LLC,
Intervenor-Defendants.

*
*
*
*
*
*
*
*
*
*
*
*
*
*
*

Civil Action No. 04-10421-JLT

MEMORANDUM

July 20, 2005

TAURO, J.

Between December 2003 and February 2004, Plaintiff ITV Direct, Inc. ("ITV") received six shipments of a health supplement called "Supreme Greens" (hereinafter "goods") from Defendant Healthy Solutions, LLC.¹ ITV accepted the goods, never claimed non-conformity, and never suggested that Healthy Solutions acted improperly in any way regarding the actual sale or delivery of the goods. The price of the goods totals \$1,821,864, and ITV has not paid the bill.²

¹See Joint Stipulations of Fact [#113] ¶ 34.

²Id. ¶¶ 6, 9, 12, 15, 18, 21, 34.

ITV refuses to pay for the goods because it alleges that Healthy Solutions breached the parties' distribution agreement by failing to pay ITV royalties from web site sales, failing to withdraw a trademark application, failing to assign the domain name "supremegreens.com" to ITV, and failing to indemnify ITV in a lawsuit brought against ITV by the Federal Trade Commission.³ Healthy Solutions denies these allegations and has brought a counterclaim against ITV for the price of the goods delivered and accepted.

Healthy Solutions, however, did not manufacture the goods. Rather, Healthy Solutions purchased the goods from Cappseals, Inc. Because ITV refuses to pay for the goods, Healthy Solutions has been unable to pay Cappseals. Seeking to ensure payment for the goods it manufactured, Cappseals intervened in this action and obtained a stipulated judgment against Healthy Solutions in the principal amount of \$890,182.09.⁴ Cappseals also brought a reach-and-apply claim against ITV. Cappseals has now moved for summary judgment with respect to its reach-and-apply claim.

For purposes of the instant motion for summary judgment, the issue to be decided is whether ITV's various claims against Healthy Solutions can set-off ITV's obligation to pay for the six shipments of goods manufactured by Cappseals and delivered by Healthy Solutions. If ITV cannot set-off its obligation to pay for the goods, then Cappseals would be entitled to

³See Am. Compl. ¶¶ 25, 31-32, 36-37, 38-42, 58-63. ITV also alleges that Healthy Solutions fraudulently induced ITV to enter into the Distribution Agreement by misrepresenting the reliability of scientific evidence supporting the health claims of Supreme Greens. See Am. Compl. ¶¶ 46-50. This, however, has not stopped ITV from selling the product. Joint Stipulations of Fact ¶¶ 30-31.

⁴J. Against Healthy Solutions, LLC [#91].

judgment as a matter of law on its statutory reach-and-apply claim.⁵

Discussion

Under Rule 56 of the Federal Rules of Civil Procedure, summary judgment is appropriate only if the record reveals that there is “no genuine issue as to any material fact and . . . the moving party [has demonstrated an] entitle[ment] to a judgment as a matter of law.”⁶ Under this standard, the “party seeking summary judgment [must] make a preliminary showing that no genuine issue of material fact exists. Once the movant has made this showing, the nonmovant must contradict the showing by pointing to specific facts demonstrating that there is, indeed, a trialworthy issue.”⁷ In deciding whether to allow a motion for summary judgment, a court “‘must view the entire record in the light most hospitable to the party opposing summary judgment, indulging all reasonable inferences in that party’s favor.’”⁸

A. UCC § 2-717

The parties agree that Massachusetts law governs this dispute. Because this case involves

⁵More precisely, if Healthy Solutions is entitled to summary judgment on its counterclaim for the price of the goods, then both Healthy Solutions’ debt to Cappseals and ITV’s debt to Healthy Solutions would be reduced to judgments. The existence of both debts, established beyond dispute, would entitle Cappseals to summary judgment on its statutory reach-and-apply claim. See Hunter v. Youthstream Media Networks, Inc., 241 F. Supp. 2d 52, 57-58 (D. Mass. 2002) (citing Mass. Gen. Laws ch. 214 § 3(6), (7)).

⁶Fed. R. Civ. P. 56(c).

⁷Blackie v. Maine, 75 F.3d 716, 721 (1st Cir. 1996) (quoting Nat’l Amusements, Inc. v. Town of Dedham, 43 F.3d 731, 735 (1st Cir. 1995)).

⁸Mullin v. Raytheon Co., 164 F.3d 696, 698 (1st Cir. 1999) (quoting Griggs-Ryan v. Smith, 904 F.2d 112, 115 (1st Cir. 1990)).

transactions in goods, the Massachusetts Uniform Commercial Code (“UCC”) controls.⁹ ITV argues that § 2-717 of the UCC allows ITV to withhold payment from Healthy Solutions, and ultimately Cappseals, because Healthy Solutions allegedly breached the parties’ distribution agreement. Under § 2-717, “[t]he buyer on notifying the seller of his intention so to do may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract.”¹⁰ ITV construes UCC § 2-717 too broadly.

Section 2-717 “is not a general set-off provision permitting a buyer of goods to adjust its continuing contract obligations according to the equities perceived by the buyer.”¹¹ The buyer’s right to set-off under § 2-717 must “stem from a breach of the *same contract* under which the seller is attempting to recover his price.”¹² Moreover, “in order for a buyer to invoke § 2-717, the asserted breach must go to the *essence of the transaction* under which the seller seeks to recover his price.”¹³ For this reason, “it is well established that the buyer’s obligation to pay for goods tendered and accepted does not arise under the same contract as the alleged breach of an exclusive dealing or distributorship arrangement by the seller.”¹⁴

⁹Mass. Gen. Laws ch. 106, § 2-102.

¹⁰Mass. Gen. Laws ch. 106, § 2-717 displaces a buyer’s right to set-off under the common law. See Carlisle Corp. v. Uresco Const. Materials, Inc., 823 F. Supp. 271, 275 (M.D. Pa. 1993).

¹¹C. R. Bard, Inc. v. Med. Elecs. Corp., 529 F. Supp. 1382, 1387 (D. Mass. 1982) (quoting Columbia Gas Transmission Corp. v. Larry H. Wright, Inc., 443 F. Supp. 14, 20 (S.D. Ohio 1977)).

¹²Travenol Labs., Inc. v. Zotal, Ltd., 474 N.E.2d 1070, 1072 (Mass. 1985) (emphasis added).

¹³C. R. Bard, 529 F. Supp. at 1387 (emphasis added).

¹⁴Travenol Labs., 474 N.E.2d at 1073 (internal citations and quotations omitted).

In light of the applicable case law, ITV may not rely on § 2-717 to avoid its obligation to pay for the goods it accepted from Healthy Solutions. None of ITV's various claims against Healthy Solutions go to the essence of the purchase-and-sale transaction. It is undisputed that ITV re-sold, and continues to sell, the goods.¹⁵ It is also undisputed that ITV never rejected, or even complained about, any of the goods it accepted and re-sold.¹⁶ Like the situation in *C.R. Bard v. Medical Electronics Corp.*, "there is no hint that seller acted improperly in any way regarding the actual sale or delivery of the goods."¹⁷

Moreover, the purchase order at issue does not incorporate the parties' distributorship agreement.¹⁸ The purchase order, not the distributorship agreement, created ITV's obligation to pay for the specific goods purchased and accepted.¹⁹ While the distribution agreement certainly contemplated future sales, the individual purchase orders specifically set forth the price, type, quantity of goods, and method of cancellation.²⁰ ITV, therefore, may not set-off its obligation to pay for the goods with damages stemming from remote claims that do not involve the seller's duty to deliver conforming goods under the specific purchase order.²¹

¹⁵Joint Stipulations of Fact ¶¶ 30-31.

¹⁶See id. ¶¶ 22-31.

¹⁷529 F. Supp. at 1387.

¹⁸Silverman Aff. [#123] Ex. B ("Purchase Order No. 1101").

¹⁹See Carlisle Corp. v. Uresco Const. Materials, Inc., 823 F. Supp. 271, 274 (M.D. Pa. 1993).

²⁰See Purchase Order No. 1101.

²¹That the distribution agreement anticipated or even incorporated future purchase orders is irrelevant because the alleged breaches of the distribution agreement do not go to the essence of the particular purchase-and-sale transactions at issue.

B. Final Judgment

ITV argues that even if Cappseals is entitled to summary judgment, this court should not enter final judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure until ITV's claims against Healthy Solutions have been adjudicated. This court disagrees. There is "no just reason" to further delay payment for goods delivered, accepted, and re-sold.²² Because ITV's claims against Healthy Solutions are separate and distinct from the specific purchase-and-sale transactions at issue, the Court of Appeals would not have to "decide the same issues more than once even if there were subsequent appeals."²³ Like other courts that have faced the issue, this court will not hesitate to enter final judgments pursuant to Rule 54(b) with respect to Healthy Solutions' counterclaim for the price of the goods and Cappseals' reach-and-apply claim.²⁴

AN ORDER WILL ISSUE.

/s/ Joseph L. Tauro
United States District Judge

²²Fed. R. Civ. P. 54(b).

²³Carlisle Corp., 823 F. Supp. at 276 (internal citations omitted).

²⁴See id.; C. R. Bard, Inc. v. Med. Elecs. Corp., 529 F. Supp. 1382, 1388 (D. Mass. 1982).

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CAPPSEALS, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
DIRECT MARKETING CONCEPTS, INC.,)	
ITV DIRECT, INC., DIRECT	)	C.A. No. 05-11907-JLT
FULFILLMENT, LLC, DONALD)	
BARRETT, and ROBERT MAIHOS,)	
)	
Defendants.)	
)	

**AFFIDAVIT OF SCOTT SILVERMAN IN SUPPORT OF CAPPSEALS INC.'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DIRECT MARKETING CONCEPTS, INC., et
al.,

Defendants.

CIVIL ACTION NO. 04-CV-11136GAO

AFFIDAVIT OF ROBERT MAIHOS

I, ROBERT MAIHOS, declare as follows:

1. I am a principal shareholder of defendants Direct Marketing Concepts, Inc. ("DMC") and ITV Direct, Inc. ("ITV"), and am responsible for the day-to-day operations of both companies. I make this affidavit on the basis of my own personal knowledge of the facts set forth herein and could testify competently thereto if called to do so.
2. DMC and ITV Direct, located in Beverly, Massachusetts, are media and marketing companies that collectively employ over 140 individuals in Massachusetts.
3. DMC and ITV Direct have maintained accurate and complete books and records of its business since inception in 2001. All transactions of the companies have been properly recorded in the books and records, including all payments to employees, salaries and benefits, all expenses and all distributions. There have been no "secret" payments of any kind that are not recorded in the books of the company, nor does the company maintain any offshore or secret bank accounts. Neither DMC nor ITV have secreted any assets or made any fraudulent transfers in anticipation of the FTC's civil action.
4. In connection with ITV's production of an infomercial for Alex Guerrero and his product Supreme Greens with MSM, Guerrero stated to me personally that he is a doctor and

operates a clinic in California. He stated that he has cancer patients, AIDS patients, and patients with MS, diabetes and Parkinson's disease. He stated that through his clinic he conducted a study of over 200 of patients, all of whom were diagnosed as terminally ill, and that all but eight of these patients are still alive. This study was also confirmed by fitness celebrity Tony Robbins, who discussed Alex Guerrero and his clinic on one of his fitness shows. A copy of the transcript of that show is attached as Exhibit A. On several occasions, when we requested that Guerrero provide the scientific support and studies concerning these claims, Guerrero confirmed to me that he possessed such documentary and clinical support. He also stated this to our sales force in a taped presentation. A copy of that transcript is attached as Exhibit B.

5. In connection with the infomercials produced by ITV for Alex Guerrero's Supreme Greens, ITV itself did not make any statements about the product. Rather, all of the statements were presented solely as the opinions of Guerrero and that fact was clearly disclosed to viewers of the infomercials. In addition, the infomercials and all other promotional materials produced for these products had express disclaimers, clearly stating that results could vary and that the product was not a cure for any disease. Moreover, the infomercial disclosed that ITV was not confirming or attesting that there existed scientific support for all of the claims made by Guerrero. Not only did ITV require these disclaimers throughout the infomercials, but the networks running the infomercials also required them.

6. In addition to the disclaimers above, ITV also received indemnification from Guerrero's company Healthy Solutions for the health claims made in the infomercial. A copy of the Distribution Agreement containing the indemnification clause is attached to the affidavit of Donald Barrett as Exhibit E. Thus, to the extent that the FTC is able to demonstrate that Guerrero's claims violated any laws or regulations, ITV fully intends to seek complete indemnification from Healthy Solutions. Such a demand has already been made and is subject to a pending action in the Boston federal court.

7. I have reviewed the Declaration of Scot Sarver submitted by the FTC in support of its request for a receiver and an asset freeze. That declaration is filled with untrue statements,

based on rank hearsay and lacking any factual support. Moreover, Sarver has a significant motive to lie about DMC, ITV and Donald Barrett. Specifically, and directly contrary to his declaration, Sarver was recently fired by ITV for violating his agreement not to compete with the business and stealing from the company. He established a separate business and was moving customers and opportunities to this new business. When confronted with these facts and his non-compete agreement, he admitted that he had broken into a secure location, obtained his employment agreement and shredded it in an effort to destroy evidence of his wrongful conduct. He was then terminated from his employment. Since his termination from ITV, we have become aware that Sarver is actively seeking to compete with ITV, by selling identical products, reaching out to ITV's distributors and contacting ITV's customers. He would personally greatly benefit from any damage done to the operations of DMC and ITV.

8. In addition, Sarver has been the subject of several complaints of sexual harassment and officially reprimanded on one occasion. He was also caught on videotape engaged in improper sexual conduct in his office at ITV. Despite the fact that he was married at the time, we have become aware of at least five separate incidents of sexual conduct between Mr. Sarver and employees of ITV. These acts also contributed to the decision to terminate his employment and Mr. Sarver was very unhappy when these matters were brought to his attention.

10. Subsequent to his termination from ITV, Sarver also attempted to defraud the Massachusetts unemployment bureau and sought ITV's assistance in his conspiracy by asking ITV to lie about his employment status. When ITV refused to do so and his unemployment claim was denied, he was extremely upset. Since his termination from ITV, several employees have reported to me that Sarver has publicly stated that he will do whatever is necessary to harm DMC, ITV, myself and Donald Barrett.

11. Sarver's statements in his declaration about alleged secret payments and transfers of assets and funds of DMC, ITV and/or Direct Fulfillment are untrue. All of the transactions of these companies are reflected in each company's books and records and I am not aware of any transaction that has not been properly recorded. All funds paid by the company to myself or Mr.

Barrett are recorded properly and we have paid all required taxes on those amounts. All purchases of personal items for myself have been made by myself and are reflected in my personal tax returns. Neither I, Mr. Barrett, DMC, ITV nor Direct Fulfillment has made any fraudulent transfer of any asset, nor do the companies maintain offshore or secret bank accounts or similar arrangements for the secretion of assets or funds.

12. Mr. Sarver's statements about DMC's and ITV's sales force are also untrue. DMC and ITV stress the importance of quality control to all our employees and require them to disclose the terms of any of our programs, including our autoship program fully and clearly. A new system purchased by the company in late-2003 also assures that sales personnel are monitored and adhere to the company's policies. Correspondence relating to these procedures is attached as Exhibit C. While any commission-based sales structure can lend itself to potential abuses by the sales staff, we seek to identify these abuses immediately and we take appropriate action, including terminating the offending employee.

13. I have also read the affidavit of Richard Cushman submitted by the FTC. Mr. Cushman was hired by the company because he was the husband of Mr. Barrett's wife's sister. Since that time, she has filed for divorce and Mr. Cushman has been fired by the company. I am aware of numerous threats made by Mr. Cushman against DMC, ITV and Mr. Barrett, including threats made prior to the company's holiday party. I have also been told by employees that Mr. Cushman has vowed to "bring down" the company any way he can. Because of these threats, we sent Mr. Cushman a trespass letter, prohibiting him from entering any of the properties or facilities of DMC or ITV.

14. Mr. Cushman's statements in his affidavit about the company's finances are untrue. No company funds have been secretly used for personal expenses. In addition, Mr. Barrett does not own a boat, jet-skis or a house in Florida. No assets of the company are being secreted and there have never been any fraudulent transfers of assets by myself or Mr. Barrett.

15. Mr. Cushman's statements regarding the call center are also false. As noted above, all of ITV's sales representatives are educated in the policies of the company, which

include providing full disclosure to customers and obtaining the customer's express consent before any charges are made to any credit card account. These procedures have been significantly enhanced by new technologies, all acquired after Mr. Cushman had left the company. Thus, he is not competent to testify about the current policies and procedures employed by ITV to ferret out rogue sales personnel, which are substantial.

16. Based upon the FTC's concerns with the infomercials for coral calcium and Supreme Greens with MSM, DMC and ITV have ceased running those infomercials completely. The coral calcium infomercial has not run in over a year, and all versions of the Supreme Greens infomercial were halted in April 2004. DMC and ITV have no intention of running either infomercial in the future.

17. DMC and ITV have other profitable operations and business that is unrelated to coral calcium, Supreme Greens or any other ingestible dietary supplement. The profit from these operations, as well as any recovery on DMC's and ITV's indemnification claims, could be used to satisfy any ultimate judgment or settlement obtained by the FTC. The relief the FTC is currently seeking would prevent these avenues of recovery.

18. The FTC also is not seeking emergency relief against the defendants Triad ML Marketing, Inc., King Media or Allen Stern. This does not make sense to me, since we informed the FTC months ago that Stern and his businesses possessed all of the merchant accounts for the coral calcium product and is the sole distributor of coral calcium to various retail outlets. Thus, all of the funds from the infomercial sales of coral calcium through the time that the infomercial was pulled from the air, as well as all the proceeds of current retail sales, are being received by Stern and his companies. Apparently, Triad is also still running a 30 second advertisement for Coral Calcium Daily, but the FTC is not seeking any emergency relief in connection with this advertisement. We are not currently running any media of any kind for coral calcium.

19. Likewise, the FTC is not seeking the extraordinary relief of a receiver or an asset freeze against Healthy Solutions, or any of its officers or directors, including Guerrero. As recognized by the FTC, Healthy Solutions is still operating a website and selling Supreme

Greens with MSM, based upon the representations made by Guerrero "as seen on TV", and the false representation that he is a doctor. A copy of the current web page operated by Healthy Solutions through which it sells Supreme Greens with MSM is attached as Exhibit D. Based on recent data, the Supreme Greens website was one of the most popular Internet searches in the last month and we understand that Guerrero is working with new distributors and increasing his network for the product, all based upon the substantial media exposure he received through the airing of the infomercial by ITV. To the contrary, ITV has ceased running the infomercial, does not intend to buy any additional product from Healthy Solutions, and intends to focus its future energies and business on other products.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 4th day of June, 2004 at Beverly, Massachusetts.

/s/ Robert Maihos
ROBERT MAIHOS

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CAPPSEALS, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
DIRECT MARKETING CONCEPTS, INC.,)	
ITV DIRECT, INC., DIRECT	)	C.A. No. 05-11907-JLT
FULFILLMENT, LLC, DONALD)	
BARRETT, and ROBERT MAIHOS,)	
)	
Defendants.)	
)	

**AFFIDAVIT OF SCOTT SILVERMAN IN SUPPORT OF CAPPSEALS INC.'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

EXHIBIT C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ITV DIRECT, INC.,

Plaintiff,

v.

HEALTHY SOLUTIONS, L.L.C., et al.,

Defendants.

CAPPSEALS, INC.,

Plaintiff-in-Intervention,

v.

HEALTHY SOLUTIONS, L.L.C., d/b/a
DIRECT BUSINESS CONCEPTS; ITV
DIRECT, INC.; and DIRECT
FULFILLMENT, LLC,

Intervenor-Defendants.

Civil Action No. 04-CV-10421-JLT

JOINT STIPULATIONS OF FACT

The parties to the above-captioned action, by and through their counsel, do hereby stipulate and agree as follows:

1. On October 8, 2003, ITV Direct, Inc. ("ITV") issued a "standing purchase order" to Healthy Solutions, L.L.C. ("Healthy Solutions") requesting shipment of 160,000 bottles of Supreme Greens per month to be shipped to Direct Fulfillment;
2. On November 21, 2003, ITV issued a purchase order to Healthy Solutions, requesting shipments of 50,000 bottles of Supreme Greens per week;
3. In or around December 19, 2003, Direct Fulfillment received 50,004 bottles of Supreme Greens;
4. In or around December 29, 2003, Direct Fulfillment received 50,012 bottles of Supreme Greens;

5. In or around December 31, 2003, ITV Direct Inc. received invoice #21 from Direct Business Concepts ("DBC") indicating that ITV owed \$300,078.00 for the December 29, 2003 shipment of Supreme Greens;

6. Neither ITV nor any of its related entities has paid Invoice #21;

7. In or around January 5, 2004, Direct Fulfillment received 30,912 bottles of Supreme Greens;

8. In or around January 9, 2004, ITV received Invoice #22 from Direct Business Concepts indicating that ITV owed \$185,472.00 for the January 5, 2004 shipment of Supreme Greens;

9. Neither ITV nor any of its related entities has paid Invoice #22;

10. In or around January 14, 2004, Direct Fulfillment received 49,920 bottles of Supreme Greens capsules and 4,032 jars of Supreme Greens powder;

11. In or around January 14, 2004, ITV received Invoice #23 from Direct Business Concepts indicating that ITV owed \$323,712.00 for the January 14, 2004 shipment of Supreme Greens;

12. Neither ITV nor any of its related entities has paid Invoice #23;

13. In or around January 21, 2004, Direct Fulfillment received 57,600 bottles of Supreme Greens capsules and 5,091 jars of Supreme Greens powder;

14. In or around January 21, 2004, ITV received Invoice #24 from Direct Business Concepts indicating that ITV owed \$376,146.00 for the January 21, 2004 shipment of Supreme Greens;

15. Neither ITV nor any of its related entities has paid Invoice #24;

16. In or around January 29, 2004, Direct Fulfillment received 48,000 bottles of

Supreme Greens capsules and 5,036 jars of Supreme Greens powder;

17. In or around January 29, 2004, ITV received Invoice #25 from Direct Business Concepts indicating that ITV owed \$318,216.00 for the January 29, 2004 shipment of Supreme Greens;

18. Neither ITV nor any of its related entities has paid Invoice #25;

19. In or around February 5, 2004, Direct Fulfillment received 48,000 bottles of Supreme Greens capsules and 5,040 jars of Supreme Greens powder;

20. In or around February 6, 2004, ITV received Invoice #26 from Direct Business Concepts indicating that ITV owed \$318,240.00 for the February 5, 2004 shipment of Supreme Greens;

21. Neither ITV nor any of its related entities has paid Invoice #26;

22. For each of the Supreme Greens shipments between December 29, 2004 through February, 2004, upon delivery, Direct Fulfillment took physical custody of the goods and had a reasonable opportunity to inspect the Supreme Greens it received;

23. ITV had a reasonable opportunity to inspect the Supreme Greens Direct Fulfillment received between December 29, 2004 through February, 2004;

24. ITV never rejected any of the Supreme Greens contained in the six shipments Direct Fulfillment received between December 29, 2004 through February, 2004;

25. Direct Fulfillment never rejected any of the Supreme Greens contained in the six shipments it received between December 29, 2004 through February, 2004;

26. ITV never tendered back to Healthy Solutions or Cappseals any of the Supreme Greens contained in the six shipments Direct Fulfillment received between December 29, 2004 through February, 2004;

27. Direct Fulfillment never tendered back to Healthy Solutions or Cappseals any of the Supreme Greens contained in the six shipments it received between December 29, 2004 through February, 2004;

28. ITV did not provide notice to Healthy Solutions or Cappseals of its intent to reject any of the Supreme Greens contained in the six shipments Direct Fulfillment received between December 29, 2004 through February, 2004;

29. Direct Fulfillment did not provide notice to Healthy Solutions or Cappseals of its intent to reject any of the Supreme Greens contained in the six shipments it received between December 29, 2004 through February, 2004;

30. ITV has sold units of the Supreme Greens contained in the six shipments it received between December 29, 2004 through February, 2004;

31. ITV continues to sell units of the Supreme Greens contained in the six shipments it received between December 29, 2004 through February, 2004;

32. As of August 23, 2004 Donald Barrett was still taking Supreme Greens;

33. In total, Direct Fulfillment received 284,444 bottles of Supreme Greens capsules and 19,199 jars of Supreme Greens powder between December 29, 2003 through around February 6, 2004;

34. In total, ITV was invoiced \$1,821,864.00 for the six shipments of Supreme Greens Direct Fulfillment received between December 29, 2003 through around February 6, 2004;

35. As of February 13, 2004 Direct Fulfillment had 333,918 units of Supreme Greens in inventory;

36. By August 23, 2004 Direct Fulfillment had less than 100,000 units of Supreme

Greens in inventory; and

37. Between February 13, 2004 and August 23, 2004 ITV sold more than 200,000 units of Supreme Greens.

Respectfully submitted,
CAPPSEALS, INC.
By its attorneys,

/s/ Scott A. Silverman

Daniel J. Kelly BBO# 553926

dkelly@ghlaw.com

Scott A. Silverman, BBO #638087

ssilverman@ghlaw.com

Gadsby Hannah LLP

225 Franklin Street

Boston, MA 02110

(617) 345-7000

- and -

HEALTHY SOLUTIONS, LLC, HEALTH
SOLUTIONS, INC., ALEJANDRO
GUERRERO, MICHAEL HOWELL,
and GREGORY GEREMESZ
By their attorney,

/s/ Becky V. Christensen

Becky v. Christensen, Esq. (State Bar No. 147013)

1920 Main Street, Suite 150

Irvine, California 92614

Telephone #: (949) 851-5000

Fax #: (949) 851-5051

- and -

ITV DIRECT, INC. and
DIRECT FULFILLMENT, LLC
By its attorneys,

/s/ Peter S. Brooks

Peter S. Brooks, BBO #058980
Christopher F. Robertson, BBO #642094
Susan W. Gelwick, BBO #567115
Seyfarth Shaw LLP
Two Seaport Lane, Suite 300
Boston, MA 02210-2028
Telephone: (617) 946-4800
Telecopier: (617) 946-4801

Dated: May 26, 2005

Certificate of service

I hereby certify that a true and accurate copy of the foregoing was served on the attorneys of record pursuant to Fed. R. Civ. P. 5 as follows:

Via electronic notification:

Peter S. Brooks pbrooks@seyfarth.com

Susan W. Gelwick sgelwick@seyfarth.com

Dustin F. Hecker dhecker@pbl.com

Christopher F. Robertson crobertson@seyfarth.com

Becky Christensen bvc@ocmplaw.com

/s/ Scott A. Silverman

Daniel J. Kelly BBO# 553926

dkelly@ghlaw.com

Scott A. Silverman, BBO #638087

ssilverman@ghlaw.com

Gadsby Hannah LLP

225 Franklin Street

Boston, MA 02110

(617) 345-7000

DATED: May 26, 2005

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CAPPSEALS, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
DIRECT MARKETING CONCEPTS, INC.,)	
ITV DIRECT, INC., DIRECT	)	C.A. No. 05-11907-JLT
FULFILLMENT, LLC, DONALD)	
BARRETT, and ROBERT MAIHOS,)	
)	
Defendants.)	
)	

**AFFIDAVIT OF SCOTT SILVERMAN IN SUPPORT OF CAPPSEALS INC.'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

EXHIBIT D

Direct Marketing Concepts, Inc.

900 Cummings Center

Suite B07-U

Beverly, MA 01915

Purchase Order

Date	P.O. No.
11/21/2003	1101

Vendor
Healthy Solutions, Inc. 11272 Day Lily Street Fontana, CA 92337 ATTN: GREG

Ship To
Direct Fufillment 100 Cummings Center Suite 143H Dock 144Q Beverly, MA 01915

Item	Description	Qty	Rate	Amount
Supreme Greens (...)	SUPREME GREENS WITH MSM - (CAPSULES OR POWDERS) PLEASE CONSIDER THIS PURCHASE ORDER A WEEKLY SHIPMENT OF 50,000 UNITS OF SUPREME GREENS WITH MSM THIS WILL REPLACE PO NO. 1078 THIS PURCHASE ORDER IS SUBJECT TO CHANGE OR CANCELLATION UPON 30 DAY WRITTEN NOTICE	50,000	6.50	325,000.00
Thank you.		Total		
		\$325,000.00		

Phone #	Fax #
978-299-2231	978-299-2589

ITV Direct, Inc.

900 Cummings Center
Suite B07-U
Beverly, MA 01915

Purchase Order

Date	P.O. No.
11/21/2003	1101

Vendor
Healthy Solutions, Inc. 11272 Day Lily Street Fontana, CA 92337 ATTN: GREG

Ship To
Direct Fulfillment 100 Cummings Center Suite 143H Dock 144Q Beverly, MA 01915

Item	Description	Qty	Rate	Amount
Supreme Greens (...)	SUPREME GREENS WITH MSM - (CAPSULES OR POWDERS) PLEASE CONSIDER THIS PURCHASE ORDER A WEEKLY SHIPMENT OF 50,000 UNITS OF SUPREME GREENS WITH MSM THIS WILL REPLACE PO NO. 1078 THIS PURCHASE ORDER IS SUBJECT TO CHANGE OR CANCELLATION UPON 30 DAY WRITTEN NOTICE	50,000	6.50	325,000.00
Thank you.		Total 325,000.00		

Phone #	Fax #
978-299-2231	978-299-2589

ITV 00324

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CAPPSEALS, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
DIRECT MARKETING CONCEPTS, INC.,)	
ITV DIRECT, INC., DIRECT	)	C.A. No. 05-11907-JLT
FULFILLMENT, LLC, DONALD)	
BARRETT, and ROBERT MAIHOS,)	
)	
Defendants.)	
)	

**AFFIDAVIT OF SCOTT SILVERMAN IN SUPPORT OF CAPPSEALS INC.'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

EXHIBIT E

Direct Business Concepts

9528 Miramar Road, Suite 100
 San Diego, CA 92126

Invoice

Date	Invoice #
12/31/2003	21

Bill To
Direct Marketing Concepts/ ITV Direct Bob Maihos 900 Cummings Center Suite #B07-U Beverly, MA 01915

Ship To
Direct Marketing Concepts/ ITV Direct Bob Maihos 100 Cummings Center Suite #143H, Dock #144Q Beverly, MA 01915

P.O. Number	Terms
1101	Net 30

Quantity	Description	Price Each	Amount
✓50,013	Supreme Greens with MSM: Capsules (SHIPPED ON 12-29-03)	6.00	300,078.00
		Subtotal	\$300,078.00
		Sales Tax (0.0%)	\$0.00
		Total	\$300,078.00
		Payments/Credits	\$0.00
		Balance Due	\$300,078.00

Direct Business Concepts

9528 Miramar Road, Suite 100
San Diego, CA 92126

Invoice

Date	Invoice #
1/9/2004	22

Bill To
Direct Marketing Concepts/ ITV Direct Bob Maihos 900 Cummings Center Suite #B07-U Beverly, MA 01915

Ship To
Direct Marketing Concepts/ ITV Direct Bob Maihos 100 Cummings Center Suite #143H, Dock #144Q Beverly, MA 01915

P.O. Number	Terms
1101	Net 30

Quantity	Description	Price Each	Amount
√30,912	Supreme Greens with MSM: Capsules (SHIPPED ON 1-5-04)	6.00	185,472.00
		Subtotal	\$185,472.00
		Sales Tax (0.0%)	\$0.00
		Total	\$185,472.00
		Payments/Credits	\$0.00
		Balance Due	\$185,472.00

Direct Business Concepts

9528 Miramar Road, Suite 100
San Diego, CA 92126

Invoice

Date	Invoice #
1/14/2004	23

Bill To
Direct Marketing Concepts/ ITV Direct Bob Maihos 900 Cummings Center Suite #B07-U Beverly, MA 01915

Ship To
Direct Marketing Concepts/ ITV Direct Bob Maihos 100 Cummings Center Suite #14311, Dock #144Q Beverly, MA 01915

P.O. Number	Terms
1101	Net 30

Quantity	Description	Price Each	Amount
49,920	Supreme Greens with MSM: Capsules	6.00	299,520.00
4,032	Supreme Greens with MSM: Powder	6.00	24,192.00
	(SHIPPED ON 1-14-04)		
		Subtotal	\$323,712.00
		Sales Tax (0.0%)	\$0.00
		Total	\$323,712.00
		Payments/Credits	\$0.00
		Balance Due	\$323,712.00

Direct Business Concepts

9528 Miramar Road, Suite 100
San Diego, CA 92126

Invoice

Date	Invoice #
1/21/2004	24

Bill To
Direct Marketing Concepts/ ITV Direct Bob Maihos 900 Cummings Center Suite #B07-U Beverly, MA 01915

Ship To
Direct Marketing Concepts/ ITV Direct Bob Maihos 100 Cummings Center Suite #143H, Dock #144Q Beverly, MA 01915

P.O. Number	Terms
1101	Net 30

Quantity	Description	Price Each	Amount
57,600	Supreme Greens with MSM: Capsules	6.00	345,600.00
5,091	Supreme Greens with MSM: Powder	6.00	30,546.00
	(SHIPPED ON 1-21-04)		
		Subtotal	\$376,146.00
		Sales Tax (0.0%)	\$0.00
		Total	\$376,146.00
		Payments/Credits	\$0.00
		Balance Due	\$376,146.00

Direct Business Concepts

9528 Miramar Road, Suite 100
San Diego, CA 92126

Invoice

Date	Invoice #
1/29/2004	25

Bill To
Direct Marketing Concepts/ ITV Direct Bob Maihos 900 Cummings Center Suite #B07-U Beverly, MA 01915

Ship To
Direct Marketing Concepts/ ITV Direct Bob Maihos 100 Cummings Center Suite #143H, Dock #144Q Beverly, MA 01915

P.O. Number	Terms
1101	Net 30

Quantity	Description	Price Each	Amount
48,000	Supreme Greens with MSM: Capsules	6.00	288,000.00
5,036	Supreme Greens with MSM: Powder (SHIPPED ON 1-29-04)	6.00	30,216.00
		Subtotal	\$318,216.00
		Sales Tax (0.0%)	\$0.00
		Total	\$318,216.00
		Payments/Credits	\$0.00
		Balance Due	\$318,216.00

Direct Business Concepts

9528 Miramar Road, Suite 100
 San Diego, CA 92126

Invoice

Date	Invoice #
2/6/2004	26

Bill To
Direct Marketing Concepts/ ITV Direct Bob Maihos 900 Cummings Center Suite #B07-U Beverly, MA 01915

Ship To
Direct Marketing Concepts/ ITV Direct Bob Maihos 100 Cummings Center Suite #143H, Dock #144Q Beverly, MA 01915

P.O. Number	Terms
1101	Net 30

Quantity	Description	Price Each	Amount
48,000	Supreme Greens with MSM: Capsules	6.00	288,000.00
5,040	Supreme Greens with MSM: Powder (SHIPPED ON 2-6-04)	6.00	30,240.00
		Subtotal	\$318,240.00
		Sales Tax (0.0%)	\$0.00
		Total	\$318,240.00
		Payments/Credits	\$0.00
		Balance Due	\$318,240.00

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

_____)	
CAPPSEALS, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
DIRECT MARKETING CONCEPTS, INC.,)	
ITV DIRECT, INC., DIRECT	)	C.A. No. 05-11907-JLT
FULFILLMENT, LLC, DONALD)	
BARRETT, and ROBERT MAIHOS,)	
)	
Defendants.)	
_____)	

**AFFIDAVIT OF SCOTT SILVERMAN IN SUPPORT OF CAPPSEALS INC.'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

EXHIBIT F: PART ONE

DIRECT MARKETING CONCEPTS, INC.

**Report on Applying Agreed-Upon Procedures
to Specified Financial Statement Elements
for period January 1, 2003 through
June 30, 2004**



PANNELL
KERR
FORSTER PC

Certified Public Accountants

75 Federal Street
Boston, MA 02110

Tel: (617) 753-9985
Fax: (617) 753-9986

Independent Accountants' Report on Applying Agreed-Upon Procedures

To Direct Marketing Concepts, Inc.:

We have performed the procedures described in Attachment A, which were agreed to by Direct Marketing Concepts, Inc. and the Federal Trade Commission (the specified parties), solely to assist you with respect to ascertaining certain information about Supreme Greens with MSM contained in the accounting records of Direct Marketing Concepts, Inc. and a related entity ITV Direct, Inc. for the period January 1, 2003 through June 30, 2004, as specified in Section VI. B. 1. through 7. of the Preliminary Injunction Order dated June 23, 2004, entered by the United States District Court, District of Massachusetts on behalf of the Federal Trade Commission, as Plaintiff. This engagement to apply agreed-upon procedures was performed in accordance with standards established by the American Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of the specified parties of the report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

Our procedures and findings are described in Attachment A.

We were not engaged to, and did not, perform an audit, the objective of which would be the expression of an opinion on the certain information about Supreme Greens with MSM contained in the accounting records of Direct Marketing Concepts, Inc. and a related entity ITV Direct, Inc. for the period January 1, 2003 through June 30, 2004, as specified in Section VI. B. 1. through 7. of the Preliminary Injunction Order dated June 23, 2004, entered by the United States District Court, District of Massachusetts on behalf of the Federal Trade Commission, as Plaintiff. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the use of Direct Marketing Concepts, Inc. and the Federal Trade Commission and is not intended to be and should not be used by anyone other than these specified parties.

A handwritten signature in cursive script that reads "Pannell Kerr Forster PC".

August 16, 2004

ITV 00518

DIRECT MARKETING CONCEPTS, INC.
 AGREED-UPON PROCEDURES AND FINDINGS
 PERIOD JANUARY 1, 2003 THROUGH JUNE 30, 2004

ATTACHMENT A

<u>Order Section</u>	<u>Order Page</u>	<u>Description of information requested by the Preliminary Injunction Order dated June 23, 2004</u>	<u>Procedures</u>	<u>Findings</u>
VI. B. 1.	24	"[A]ll revenues collected and obtained by the Defendants, directly or through any other corporation, partnership, limited liability corporation, or other entity, in connection with the sale in the United States of Supreme Greens with MSM, and the location and/or transfer of all such revenues."	<p>1. We requested that Direct Marketing Concepts, Inc. provide to us reports summarizing, by month, the sales of Supreme Greens with MSM from the date of the first sale of the product through June 30, 2004.</p> <p>2. We math checked 50% of the reports entitled "Shipped Orders by Call Source, Summary" by adding individual components of the "Total" column and compared the calculated grand total to the grand total printed on the report. [The individual amounts in the "Total" column represent the total individual sales, including the billed shipping and handling charge.] The periods we selected for testing were: May, 2004; March, 2004; January, 2004; November, 2003; September, 2003; and the period January 1, 2003 through August 31, 2003.</p>	<p>1. We obtained from Direct Marketing Concepts, Inc. reports entitled "Shipped Orders by Call Source, Summary" (which summarize the sales recorded during the period specified for all categories of Supreme Greens with MSM - SGAA, SGBB, SGCC and SGRN) for the following periods: each month in the period September, 2003 through June, 2004; and the period January 1, 2003 through August 31, 2003 taken in its entirety. These reports were generated from the company's "salesystem." [The sales and refund databases are maintained in a database called Mysql. "Middleware" called Lasso allows the user to access the database and print out reports via Web pages.] Sales are recorded when the products are shipped to the customer.</p> <p>2. We found our calculated totals to be in agreement with the grand totals printed on the reports for each of the periods selected for testing.</p>

Page 1 of 28

ITV 00519

ATTACHMENT A

DIRECT MARKETING CONCEPTS, INC.
 AGREED-UPON PROCEDURES AND FINDINGS
 PERIOD JANUARY 1, 2003 THROUGH JUNE 30, 2004

<u>Order Section</u>	<u>Order Page</u>	<u>Description of information requested by the Preliminary Injunction Order dated June 23, 2004</u>	<u>Procedures</u>	<u>Findings</u>
VI. B. 1. cont'd			<p>3. We obtained from Direct Marketing Concepts, Inc. a report entitled "Shipped Orders by Call Source, Itemized" for the period January 1, 2003 through August 31, 2003 to determine the date when the first shipment (sale) was recorded for Supreme Greens with MSM. This report was also generated from the company's "Sales System." [Sales are recorded when the product is shipped to the customer.]</p> <p>4. We requested that Direct Marketing Concepts, Inc. provide to us a summary of the sales of Supreme Greens with MSM, by month of revenue.</p> <p>5. We traced the Total of the sales for each of the periods for which reports entitled "Shipped Orders by Call Source, Summary" (which summarize the sales recorded during the period specified for all categories of Supreme Greens with MSM - SGAA, SGBB, SGCC and SGRN) were generated in #1 above and compared them to the listed total for each of the periods as summarized on the report entitled "Supreme Greens Revenues by Month".</p> <p>6. We requested that Direct Marketing Concepts, Inc. provide to us a report detailing any sales of Supreme Greens with MSM which were not recorded through the "salesystem" but were recorded directly in the</p>	<p>3. We noted that the first sale was shipped and recorded on August 16, 2003.</p> <p>4. We obtained from Direct Marketing Concepts, Inc. a report entitled "Supreme Greens Revenues By Month for the period January 1, 2003 through June 2004."</p> <p>5. We found the totals for each period on the report entitled "Supreme Greens Revenues by Month" to be in agreement with the totals on the individual period reports entitled "Shipped Orders by Call Source, Summary."</p> <p>6. We obtained from Direct Marketing Concepts, Inc. a report entitled "Supreme Greens Sales 'Master-Distributors' (from General Ledger) August 16, 2003 through June 30, 2004." [August 16, 2003 was the date</p>

ATTACHMENT A

DIRECT MARKETING CONCEPTS, INC.
 AGREED-UPON PROCEDURES AND FINDINGS
 PERIOD JANUARY 1, 2003 THROUGH JUNE 30, 2004

<u>Order Section</u>	<u>Order Page</u>	<u>Description of information requested by the Preliminary Injunction Order dated June 23, 2004</u>	<u>Procedures</u>	<u>Findings</u>
VI. B. 1. cont'd			<p>Quickbooks general ledger system.</p> <p>7. We traced the total of sales detailed on the report entitled "Supreme Greens Sales 'Master-Distributors'" (from General Ledger) August 16, 2003 through June 30, 2004" to the amount labeled "Adjustment to Account for Supreme Greens Sales recorded in the General Ledger but not recorded in the Sales System" on the report entitled "Supreme Greens Revenues by Month".</p> <p>8. We math checked the summary report entitled "Supreme Greens Sales by Month" for the period January 1, 2003 through June 30, 2004 (which was described in #4 immediately above) by adding individual components of the "Total" column and the "Adjustment" described in item #7 immediately above and compared the calculated grand total to the grand total printed on the report.</p>	<p>of the first sale of Supreme Greens with MSM.]</p> <p>7. We found the amounts to be in agreement.</p> <p>8. We found that our calculated grand total of the individual period total sales amounts on the report entitled "Shipped Orders by Call Source, Summary" and the "Adjustment" described in item #7 immediately above agreed with the total printed on the report entitled "Supreme Greens Sales by Month".</p>
VI. B. 2.	24	"[T]he amount of all refunds provided by the Defendants to consumers, directly or through any other corporation, partnership, limited liability corporation, or other entity, in connection with the sale of Supreme Greens with MSM."	<p>1. We requested that Direct Marketing Concepts, Inc. provide to us reports summarizing, by month, credit card refunds related to the sales of Supreme Greens with MSM from the date of the first sale of the product through June 30, 2004.</p>	<p>1. We obtained from Direct Marketing Concepts, Inc. reports entitled "Refunds by Call Source, Summary" (which summarize the credit card refunds issued during the period specified for all categories of Supreme Greens with MSM - SGAA, SGBB, SGCC and SGRN) for the following periods: each month in the period September, 2003 through June, 2004; and the period</p>

DIRECT MARKETING CONCEPTS, INC.
 AGREED-UPON PROCEDURES AND FINDINGS
 PERIOD JANUARY 1, 2003 THROUGH JUNE 30, 2004

ATTACHMENT A

<u>Order Section</u>	<u>Order Page</u>	<u>Description of information requested by the Preliminary Injunction Order dated June 23, 2004</u>	<u>Procedures</u>	<u>Findings</u>
VI. B. 2. cont'd			<p>2. We math checked 50% of the reports entitled "Refunds by Call Source, Summary" by adding individual components of the "Total" column and compared the calculated grand total to the grand total printed on the report. [The individual amounts in the "Total" column represent the total individual refunds issued.] The periods we selected for testing were: June, 2004; April, 2004; February, 2004; December, 2003; October, 2003; and the period January 1, 2003 through August 31, 2003.</p> <p>3. We obtained from Direct Marketing Concepts, Inc. a report entitled "Refunds by Call Source, Itemized" for the period January 1, 2003 through August 31, 2003 to determine the date of the first refund issued related to a sale of Supreme Greens with MSM. This report was also generated from the company's "salesystem."</p>	<p>January 1, 2003 through August 31, 2003 taken in its entirety. These reports were generated from the company's "salesystem." [The sales and refund databases are maintained in a database called Mysql. "Middleware" called Lasso allows the user to access the database and print out reports via Web pages.] Sales are recorded when the products are shipped to the customer.</p> <p>2. We found our calculated totals to be in agreement with the grand totals printed on the reports for each of the periods selected for testing.</p> <p>3. We noted that the first refund was issued and recorded on August 18, 2003.</p>

Page 4 of 28

DIRECT MARKETING CONCEPTS, INC.
 AGREED-UPON PROCEDURES AND FINDINGS
 PERIOD JANUARY 1, 2003 THROUGH JUNE 30, 2004

ATTACHMENT A

<u>Order Section</u>	<u>Order Page</u>	<u>Description of information requested by the Preliminary Injunction Order dated June 23, 2004</u>	<u>Procedures</u>	<u>Findings</u>
VI. B. 2. cont'd			<p>4. We requested that Direct Marketing Concepts, Inc. provide to us a summary schedule of all refunds related to sales of Supreme Greens with MSM.</p> <p>5. We traced the Total of the credit card refunds for each of the periods for which reports entitled "Refunds by Call Source, Summary" (which summarize the refunds issued during the period specified for all categories of Supreme Greens with MSM - SGAA, SGBB, SGCC and SGRN) were generated in #1 above and compared them to the listed total for the period as summarized on the summary report prepared by Direct Marketing Concepts, Inc. entitled "Supreme Greens Refunds by Month".</p> <p>6. We requested that Direct Marketing Concepts, Inc. provide to us reports showing the manual checks issued for refunds related to the sales of Supreme Greens with MSM from the date of the first sale of the product through June 30, 2004.</p>	<p>4. We obtained from Direct Marketing Concepts, Inc. a summary schedule entitled "Supreme Greens Refunds by Month."</p> <p>5. We found the totals for each period on the report entitled "Supreme Greens Refunds by Month" to be in agreement with the totals on the individual period reports entitled "Refunds by Call Source, Summary."</p> <p>6. We obtained from Direct Marketing Concepts, Inc. reports entitled "Customer refunds issued" for each refund date in the period September 19, 2003 (the first refund date which included a refund related to the sales of Supreme Greens with MSM) through June 17, 2004 (the last refund date prior to June 30, 2004 which included a refund related to the sales of Supreme Greens with MSM). [These reports are derived from Excel worksheets maintained by the Customer Services Department of Direct Marketing Concepts, Inc.] These reports had been formatted by Direct Marketing Concepts, Inc. so that the total of all refunds related to</p>

ATTACHMENT A

DIRECT MARKETING CONCEPTS, INC.
 AGREED-UPON PROCEDURES AND FINDINGS
 PERIOD JANUARY 1, 2003 THROUGH JUNE 30, 2004

<u>Order Section</u>	<u>Order Page</u>	<u>Description of information requested by the Preliminary Injunction Order dated June 23, 2004</u>	<u>Procedures</u>	<u>Findings</u>
VI. B. 2. cont'd			<p>11. We traced the total of the summary report entitled "Supreme Greens Manual Check Refunds By Refund Check Date" to the summary report the summary report entitled "Supreme Greens Refunds by Month."</p> <p>12. We math checked the report entitled "Supreme Greens Refunds by Month" which was described in #4 immediately above by adding individual components of the "Total Refund" column and compared the calculated grand total to the grand total printed on the report.</p>	<p>printed on the report.</p> <p>11. We found that the total of the summary report entitled "Supreme Greens Manual Check Refunds By Refund Check Date" agreed with the amount labeled "Refunds granted by manual checks" on the summary report entitled "Supreme Greens Refunds by Month."</p> <p>12. We found that our calculated subtotal of credit card refunds on the report entitled "Supreme Greens Refunds by Month" agreed with the subtotal printed on the report, labeled "SubTotal Refunds." We also found our calculated grand total of "SubTotal Refunds" and "Refunds granted by manual checks" agreed with the "Grand Total Refunds" printed on the report.</p>
VI. B. 3.	24	<p>"[I]nformation sufficient to show the flows of all monies received by the Defendants, directly or indirectly, from the sale in the United States of Supreme Greens with MSM."</p> <p>This was interpreted to be "net sales" per a conference call discussion on 7/2/04 with Daniel Kaufman, a lawyer with the Federal Trade Commission.</p>	<p>1. We requested that Direct Marketing Concepts, Inc. provide to us a report that would summarize the aggregate total sales of, and aggregate total refunds related to, Supreme Greens with MSM from the date of the first sale of the product through June 30, 2004, with the two totals netting to net sales of Supreme Greens with MSM for that period.</p> <p>2. We compared the amounts labeled "Total Revenues" and "Total Refunds" on the report entitled "Supreme Greens Net Revenue" to the respective grand totals on</p>	<p>1. We obtained from Direct Marketing Concepts, Inc. a report entitled "Supreme Greens Net Revenue" that summarized the grand total of gross revenue (from Item VI. B. 1. above) and the grand total of refunds (from Item VI. B. 2. above) both for Supreme Greens with MSM from the date of the first sale of the product through June 30, 2004.</p> <p>2. We found the amounts labeled "Total Revenues" and "Total Refunds" on the report entitled "Supreme Greens Net Revenue" to be in agreement with the</p>

DIRECT MARKETING CONCEPTS, INC.
 AGREED-UPON PROCEDURES AND FINDINGS
 PERIOD JANUARY 1, 2003 THROUGH JUNE 30, 2004

ATTACHMENT A

<u>Order Section</u>	<u>Order Page</u>	<u>Description of information requested by the Preliminary Injunction Order dated June 23, 2004</u>	<u>Procedures</u>	<u>Findings</u>
VI. B. 3. cont'd			<p>the reports "Supreme Greens Revenues by Month" and "Supreme Greens Refunds by Month" (discussed above).</p> <p>3. We math checked the report entitled "Supreme Greens Net Revenue" which was described in #2 immediately above.</p>	<p>respective grand totals on the reports "Supreme Greens Revenues by Month" and "Supreme Greens Refunds by Month" (discussed above).</p> <p>3. When we recalculated the net of item labeled "Total Revenues" less the item labeled "Total Refunds," we found that our net total agreed with the amount labeled "Net Revenues" which was printed on the report entitled "Supreme Greens Net Revenues."</p>
VI. B. 4.	25	"[A]ll costs and expenses incurred by the Defendants, directly or through any other corporation, partnership, limited liability corporation, or other entity, in connection with the sale or marketing of Supreme Greens with MSM in the United States."	<p>A. Cost of Product Sold</p> <p>1. We requested that Direct Marketing Concepts, Inc. provide to us a report summarizing all purchases of Supreme Greens with MSM by Direct Marketing Concepts, Inc. from the date of the first purchase of the product through June 30, 2004.</p> <p>2. We traced the individual purchases for which the invoices had been paid through June 30, 2004 to the Direct Marketing Concepts, Inc. report "Credits to ALL Cash Accounts, January 1, 2003 through June 30,</p>	<p>1. We obtained from Direct Marketing Concepts, Inc. a report entitled "Cost of Supreme Greens Product Sold" This report summarizes the purchases of Supreme Greens with MSM during the period specified and then subtracts the inventory of Supreme Greens with MSM on hand at 6/30/04, to arrive at the net cost of Supreme Greens with MSM products sold during the specified period. These data were extracted from the databases of reconciled transactions in the Quickbooks general ledger systems utilized by Direct Marketing Concepts, Inc.</p> <p>2. We found that all individual purchases listed on the report "Cost of Supreme Greens Product Sold" for which the invoices had been paid by June 30, 2004 were also on the report "Credits to ALL Cash</p>

Page 8 of 28

DIRECT MARKETING CONCEPTS, INC.
 AGREED-UPON PROCEDURES AND FINDINGS
 PERIOD JANUARY 1, 2003 THROUGH JUNE 30, 2004

ATTACHMENT A

<u>Order Section</u>	<u>Order Page</u>	<u>Description of information requested by the Preliminary Injunction Order dated June 23, 2004</u>	<u>Procedures</u>	<u>Findings</u>
VI. B. 4. cont'd			<p>2004," a report showing all credits recorded in all cash accounts (i. e., all cash disbursements and transfers) for the period January 1, 2003 through June 30, 2004, sorted by pay date, in ascending date order from January 1, 2003. [This report is more completely described in Order Section VI. B. 6. below.]</p> <p>3. We requested the Direct Marketing Concepts, Inc. provide to us a report showing all invoices for the purchase of Supreme Greens with MSM which remained unpaid at June 30, 2004.</p> <p>4. We traced the individual purchases on the report entitled "Cost of Supreme Greens Product Sold For the Period January 2003 through June 2004" that had not yet been paid as of June 30, 2004 to the report entitled "Unpaid Bills for Supreme Greens Product As of June 30, 2004."</p>	<p>Accounts, January 1, 2003 through June 30, 2004," and in the same amounts. Since the report "Credits to ALL Cash Accounts, January 1, 2003 through June 30, 2004" does not detail the product being purchased, the latter report could not be reviewed for possible additional purchases not listed on "Cost of Supreme Greens Product Sold." It was noted, however, that there were no additional purchases on the report "Credits to ALL Cash Accounts, January 1, 2003 through June 30, 2004" from Direct Business Concepts, the prime vendor for Supreme Greens with MSM.</p> <p>3. We obtained from Direct Marketing Concepts, Inc. a report entitled "Unpaid Bills for Supreme Greens Product As of June 30, 2004" which listed six invoices to Direct Business Concepts that remained unpaid at June 30, 2004.</p> <p>4. We found, with one exception, that all individual purchases listed on the report "Cost of Supreme Greens Product Sold For the Period January 2003 through June 2004" that had not yet been paid for by June 30, 2004 were also on the report "Unpaid Bills for Supreme Greens Product As of June 30, 2004." The one exception involved an invoice dated 12/31/03 for a purchase from Direct Business Concepts. It was listed on the report "Cost of Supreme Greens Product Sold</p>

DIRECT MARKETING CONCEPTS, INC.
 AGREED-UPON PROCEDURES AND FINDINGS
 PERIOD JANUARY 1, 2003 THROUGH JUNE 30, 2004

ATTACHMENT A

<u>Order Section</u>	<u>Order Page</u>	<u>Description of information requested by the Preliminary Injunction Order dated June 23, 2004</u>	<u>Procedures</u>	<u>Findings</u>
VI. B. 4. cont'd			<p>5. We requested that Direct Marketing Concepts, Inc. provide to us an inventory report which showed the inventory of Supreme Greens with MSM on hand at 6/30/04.</p> <p>6. We math checked the total count for Supreme Greens with MSM on the "Inventory Report" and the cost extension at \$6 per unit, the unit cost figure provided to us by Direct Marketing Concepts, Inc.</p> <p>7. We math checked the report entitled "Cost of Supreme Greens Product Sold."</p>	<p>For the Period January 2003 through June 2004" at \$300,078.00 and on the report "Unpaid Bills for Supreme Greens Product As of June 30, 2004" at \$298,691.89, for a difference of \$1,386.11.</p> <p>5. We obtained a report from Direct Marketing Concepts, Inc. entitled "Inventory Report" as of July 1, 2004. This report showed the number of units on hand at 6/30/04 of Supreme Green Caps and Supreme Green Powder. [The "Inventory Report" is an Excel worksheet. The only portion provided to us was the section that included Supreme Greens with MSM.]</p> <p>6. We found that when we totaled the units of Supreme Green Caps and Supreme Green Powder on the "Inventory Report" our total agreed with the total printed on the report. We also found that when we multiplied the total units on the "Inventory Report" by the \$6 unit cost, our result agreed with the total dollar amount printed on the report. [We noted on invoices dated 1/29/04 and 2/6/04 from Direct Business Concepts that the total cost per unit for both Supreme Greens with MSM capsules and powder was \$6.]</p> <p>7. We found that when we totaled the individual purchases listed on the report "Cost of Supreme Greens Product Sold" our Total Supreme Purchases agreed</p>

DIRECT MARKETING CONCEPTS, INC.
 AGREED-UPON PROCEDURES AND FINDINGS
 PERIOD JANUARY 1, 2003 THROUGH JUNE 30, 2004

ATTACHMENT A

<u>Order Section</u>	<u>Order Page</u>	<u>Description of information requested by the Preliminary Injunction Order dated June 23, 2004</u>	<u>Procedures</u>	<u>Findings</u>
VI. B. 4. cont'd			<p><u>B. Media Costs</u> <u>PAX Network</u> 1. We requested from Direct Marketing Concepts, Inc. and ITV Direct, Inc. a report showing the charges for all media airings on the PAX network for the period from the week beginning July 28, 2003 through the week beginning April 26, 2004. [There were no airings before 7/28/03 or after May 2, 2004.]</p>	<p>with the total printed on the report. We also found that the "Ending Inventory 6/30/2004" on the report "Cost of Supreme Greens Product Sold." Agreed with the dollar total cost of Supreme Greens with MSM in inventory at 6/30/04 on the "Inventory Report." Finally, we found that when we subtracted the 6/30/04 inventory of Supreme Greens with MSM from the total purchases of Supreme Greens with MSM for the period our result agreed with the Net Supreme Greens Product Cost printed on the report "Cost of Supreme Greens Product Sold."</p> <p>1. We obtained from Direct Marketing Concepts, Inc. and ITV Direct, Inc. weekly reports entitled "ITV Direct Wire Transfer Sent a/b/c For Week of x/y/z," where a/b/c represents the date of the wire transfer and x/y/z represents the beginning of the week during which the media aired. We also obtained a summary report entitled "Supreme Greens Media Costs By Month for PAX Network Only For the Period January 1, 2003 through June 30, 2004." [This report was extracted from an Excel spreadsheet for all PAX network media airings maintained by the Media Department of Direct Marketing Concepts, Inc.]</p>

Page 11 of 28

ITV 00529

ATTACHMENT A

DIRECT MARKETING CONCEPTS, INC.
 AGREED-UPON PROCEDURES AND FINDINGS
 PERIOD JANUARY 1, 2003 THROUGH JUNE 30, 2004

<u>Order Section</u>	<u>Order Page</u>	<u>Description of information requested by the Preliminary Injunction Order dated June 23, 2004</u>	<u>Procedures</u>	<u>Findings</u>
VI. B. 4. cont'd			<p>2. We scanned the weekly reports to verify that the media airings were only for Supreme Greens with MSM (product codes SGRN, SGAA, SGBB and SGCC).</p> <p>3. We math checked the weekly reports for selected weeks, those beginning: 8/18/03; 8/25/03; 9/8/03; 10/6/03; 11/10/03; 12/22/03; 2/9/04; 3/15/04; and 3/29/04.</p> <p>4. We traced all the individual weekly amounts on the summary report, "Supreme Greens Media Costs By Month for PAX Network Only For the Period January 1, 2003 through June 30, 2004," back to the total on the individual weeks' reports.</p> <p>5. We math checked the total of the summary report, "Supreme Greens Media Costs By Month for PAX Network Only For the Period January 1, 2003 through June 30, 2004."</p> <p><u>All Other Media</u></p> <p>1. We requested from Direct Marketing Concepts, Inc. and ITV Direct, Inc. reports showing the monthly charges for all media airings on all other media outlets (i. e., all media outlets other than the PAX Network discussed above) for the months January 2003 through</p>	<p>2. We found that the only media airings included in the dollar totals on the weekly reports were for product codes SGRN, SGAA, SGBB and SGCC.</p> <p>3. We found that when we totaled the selected weekly reports our total agreed with the totals printed on the reports selected for testing.</p> <p>4. We found each of the weekly amounts on the summary report to be in agreement with the totals on the individual weekly reports.</p> <p>5. We found that our total agreed with the printed total on the report.</p> <p>1. We obtained from Direct Marketing Concepts, Inc. and ITV Direct, Inc. monthly reports entitled "Supreme Greens Media Costs: x 200y" where x represents the month of the airing and y represents specific year. [This media database is maintained in a database called</p>

DIRECT MARKETING CONCEPTS, INC.
 AGREED-UPON PROCEDURES AND FINDINGS
 PERIOD JANUARY 1, 2003 THROUGH JUNE 30, 2004

ATTACHMENT A

<u>Order Section</u>	<u>Order Page</u>	<u>Description of information requested by the Preliminary Injunction Order dated June 23, 2004</u>	<u>Procedures</u>	<u>Findings</u>
VI. B. 4. cont'd			<p>June 2004.</p> <p>2. We scanned the monthly reports to verify that the media airings were only for Supreme Greens with MSM (product codes SGRN, SGAA, SGBB and SGCC).</p> <p>3. We math checked the monthly reports for the following months: January and March 2003 (see note); May 2003; July 2003; September 2003; and March 2004.</p> <p>Summary of all Media Costs</p> <p>1. We requested from Direct Marketing Concepts, Inc. and ITV Direct, Inc. a summary report showing the charges for all media airings for the months January 2003 through June 2004.</p>	<p>Mysql. "Middleware" called Lasso allows the user to access the database and print out reports via Web pages.]</p> <p>2. We found that the only media airings included in the dollar totals on the weekly reports were for product codes SGRN, SGAA, SGBB and SGCC.</p> <p>3. We found that when we totaled the selected monthly reports our total agreed with the totals printed on the reports. [We were told by Direct Marketing Concepts, Inc. and ITV Direct, Inc. that the costs listed in the database, and in the report, for the months of January 2003 through April 2004 were, in fact, for January 2004 through April 2004; the year had been input into the system incorrectly. Since the period of the report covered the entire period January 2003 through June 2004, however, the dates for these three months were left unchanged on the summary report.]</p> <p>1. We obtained from Direct Marketing Concepts, Inc. and ITV Direct, Inc. a summary report entitled "Supreme Greens Media Costs By Month (paid by ITV Direct, Inc.)."</p>

Page 13 of 28

ITV 00531

DIRECT MARKETING CONCEPTS, INC.
 AGREED-UPON PROCEDURES AND FINDINGS
 PERIOD JANUARY 1, 2003 THROUGH JUNE 30, 2004

ATTACHMENT A

<u>Order Section</u>	<u>Order Page</u>	<u>Description of information requested by the Preliminary Injunction Order dated June 23, 2004</u>	<u>Procedures</u>	<u>Findings</u>
VI. B. 4. cont'd			<p>2. We traced the individual monthly amounts for "all other media" from monthly reports entitled "Supreme Greens Media Costs: x 200y" to the monthly amounts listed on the summary report entitled "Supreme Greens Media Costs By Month (paid by ITV Direct, Inc.)."</p> <p>3. We also traced the individual monthly amounts for PAX Network media from summary report "Supreme Greens Media Costs By Month for PAX Network Only For the Period January 1, 2003 through June 30, 2004" to the monthly amounts listed on the summary report entitled "Supreme Greens Media Costs By Month (paid by ITV Direct, Inc.)."</p> <p>4. We math checked the totals of the "PAX Media" and "ALL Others" columns on the summary report entitled "Supreme Greens Media Costs By Month (paid by ITV Direct, Inc.) as well as the grand total, all on the summary report entitled "Supreme Greens Media Costs By Month (paid by ITV Direct, Inc.)."</p>	<p>2. We found the individual monthly amounts for "all other media" listed on the summary report entitled "Supreme Greens Media Costs By Month (paid by ITV Direct, Inc.) to be in agreement with the monthly total on the monthly reports entitled "Supreme Greens Media Costs: x 200y."</p> <p>3. We found that the individual monthly amounts for PAX Network media listed on the summary report entitled "Supreme Greens Media Costs By Month (paid by ITV Direct, Inc.) agreed with the individual monthly totals listed on the summary report "Supreme Greens Media Costs By Month for PAX Network Only For the Period January 1, 2003 through June 30, 2004" to the monthly amounts listed on the summary report entitled "Supreme Greens Media Costs By Month (paid by ITV Direct, Inc.)."</p> <p>4. We found that our calculated totals of the "PAX Media" and "ALL Others" columns on the summary report entitled "Supreme Greens Media Costs By Month (paid by ITV Direct, Inc.) to be in agreement with the printed totals. We also found that the grand total, as printed, agreed with the totals of the "PAX Media" and "ALL Others" columns.</p>

DIRECT MARKETING CONCEPTS, INC.
 AGREED-UPON PROCEDURES AND FINDINGS
 PERIOD JANUARY 1, 2003 THROUGH JUNE 30, 2004

ATTACHMENT A

<u>Order Section</u>	<u>Order Page</u>	<u>Description of information requested by the Preliminary Injunction Order dated June 23, 2004</u>	<u>Procedures</u>	<u>Findings</u>
VI. B. 4. cont'd			<p><u>C. Packaging Costs</u></p> <p>1. We requested that Direct Marketing Concepts, Inc. provide to us a report showing the individual packaging costs incurred during the period from August 16, 2003, the date of the first sale of Supreme Greens with MSM, through June 30, 2004.</p> <p>2. We math checked the report entitled "Packaging Costs August 16, 2003 through June 2004."</p> <p>3. We requested that Direct Marketing Concepts, Inc. provide to us a report showing the allocation of packaging costs to the sales of Supreme Greens with MSM for the period August 16, 2003 through June 30, 2004.</p> <p>4. We requested that Direct Marketing Concepts, Inc. and ITV Direct, Inc. each provide to us a trial balance that combined the activity for each of the entities for</p>	<p>1. We obtained from Direct Marketing Concepts, Inc. a report entitled "Packaging Costs August 16, 2003 through June 2004." [This report was extracted from the Quickbooks general ledger system maintained by Direct Marketing Concepts, Inc.]</p> <p>2. We found that the grand total of the report we calculated agreed with the grand total printed on the last page of the report.</p> <p>3. We obtained from Direct Marketing Concepts, Inc. a report entitled "Supreme Greens Packaging Expense For the Period January 1, 2003 through June 30, 2004." [In reality, the report covered only the period August 16, 2003 through June 30, 2004.] This report related total packaging costs for the period August 16, 2003 through June 30, 2004 to the total net revenues recorded by Direct Marketing Concepts, Inc. for the same period. An allocation rate was calculated and then applied to the net sales of Supreme Greens with MSM during the same period to arrive at the packaging costs allocated to the sales of Supreme Greens with MSM.</p> <p>4. We obtained from Direct Marketing Concepts, Inc. and ITV Direct, Inc. reports entitled "Adjusted Trial Balance Combined Activity For the Period August, 16,</p>

Page 15 of 28

DIRECT MARKETING CONCEPTS, INC.
 AGREED-UPON PROCEDURES AND FINDINGS
 PERIOD JANUARY 1, 2003 THROUGH JUNE 30, 2004

ATTACHMENT A

<u>Order Section</u>	<u>Order Page</u>	<u>Description of information requested by the Preliminary Injunction Order dated June 23, 2004</u>	<u>Procedures</u>	<u>Findings</u>
VI. B. 4. cont'd			<p>the period August 16, 2003 through June 30, 2004.</p> <p>5. We requested the Direct Marketing Concepts, Inc. provide to us a schedule of the adjusting journal entries for the period August 16, 2003 through June 30, 2004. [It was noted that there were no adjusting entries for ITV Direct.]</p> <p>6. We traced the three input components of the report entitled "Supreme Greens Packaging Expense" to other reports and recalculated the results.</p>	<p>2003 through June 30, 2004." These reports were prepared by Direct Marketing Concepts, Inc. and ITV Direct, Inc. by generating adjusted trial balances for each company as of August 15, 2003 (the day before the first sale of Supreme Greens with MSM), December 31, 2003 and June 30, 2004. The "Adjusted Trial Balance Combined Activity For the Period August 16, 2003 through June 30, 2004" was then prepared by subtracting the August 15, 2003 adjusted trial balance from the December 31, 2003 adjusted trial balance (to get the activity for the period August 16, 2003 through December 31, 2003) and adding in the June 30, 2004 adjusted trial balance.</p> <p>5. We obtained from Direct Marketing Concepts, Inc. a report entitled "Adjusting Journal Entries August 16, 2003 through June 30, 2004." We reviewed the entries and noted that the entries broke down into two categories: corrections of misclassified postings to revenue and expense items (with no net effect on net income); and adjustments to previous estimated depreciation entries.</p> <p>6. We traced the item labeled "Total Net Revenues, from Trial Balance" ("item 1") to the "Adjusted Trial Balance Combined Activity For the Period August 16, 2003 through June 30, 2004," which had a subtotal for</p>

Page 16 of 28

DIRECT MARKETING CONCEPTS, INC.
 AGREED-UPON PROCEDURES AND FINDINGS
 PERIOD JANUARY 1, 2003 THROUGH JUNE 30, 2004

ATTACHMENT A

<u>Order Section</u>	<u>Order Page</u>	<u>Description of information requested by the Preliminary Injunction Order dated June 23, 2004</u>	<u>Procedures</u>	<u>Findings</u>
VI. B. 4. cont'd			<p><u>D. Shipping Costs</u></p> <p>1. We requested that Direct Marketing Concepts, Inc. provide to us a report showing the individual shipping costs incurred during the period from August 16, 2003, the date of the first sale of Supreme Greens with MSM, through June 30, 2004.</p> <p>2. We requested that Direct Marketing Concepts, Inc. provide to us a report showing the allocation of shipping costs to the sales of Supreme Greens with</p>	<p>net revenue and found the amounts to be in agreement. We traced the item labeled "Total Packaging Expenses from Trial Balance" ("item 2") to the grand total on the report "Packaging Costs" and found the amounts to be in agreement. We traced the item labeled "Supreme Greens Net Revenue" ("item 3") to the "Net Revenues" total on the report "Supreme Greens Net Revenues" and found the amounts to be in agreement. We then recalculated the percentage of item 2 divided by item 1 and found that the percentage we obtained agreed with the percentage printed on the report. We then multiplied item 3 by that percentage and found the amount we calculated to be in agreement with the amount printed on the report as "Packaging Expense Applied to Supreme Greens Net Revenues, at above percentage rate."</p> <p>1. We obtained from Direct Marketing Concepts, Inc. a report entitled "Total Shipping Costs August 16, 2003 through June 2004." [This report was extracted from the Quickbooks general ledger system maintained by Direct Marketing Concepts, Inc.]</p> <p>2. We obtained from Direct Marketing Concepts, Inc. a report entitled "Supreme Greens Shipping Expenses For the Period January 1, 2003 through June 30, 2004."</p>

Page 17 of 28

ITV 00535

ATTACHMENT A

DIRECT MARKETING CONCEPTS, INC.
 AGREED-UPON PROCEDURES AND FINDINGS
 PERIOD JANUARY 1, 2003 THROUGH JUNE 30, 2004

<u>Order Section</u>	<u>Order Page</u>	<u>Description of information requested by the Preliminary Injunction Order dated June 23, 2004</u>	<u>Procedures</u>	<u>Findings</u>
VI. B. 4. cont'd			<p>MSM for the period August 16, 2003 through June 30, 2004.</p> <p>3. We traced the three input components of the report "Supreme Greens Shipping Expenses" to other reports and recalculated the results.</p>	<p>[In reality, the report covered only the period August 16, 2003 through June 30, 2004.] This report related total shipping costs for the period August 16, 2003 through June 30, 2004 to the total net revenues recorded by Direct Marketing Concepts, Inc. for the same period. An allocation rate was calculated and then applied to the net sales of Supreme Greens with MSM during the same period to arrive at the shipping costs allocated to the sales of Supreme Greens with MSM.</p> <p>3. We traced the item labeled "Total Net Revenues, from Trial Balance" ("item 1") to the "Adjusted Trial Balance Combined Activity For the Period August 16, 2003 through June 30, 2004," which had a subtotal for net revenue and found the amounts to be in agreement. We traced the item labeled "Total Shipping Expenses from Trial Balance" ("item 2") to the grand total on the report "Total Shipping Costs" and found the amounts to be in agreement. We traced the item labeled "Supreme Greens Net Revenue" ("item 3") to the "Net Revenues" total on the report "Supreme Greens Net Revenues" and found the amounts to be in agreement. We then recalculated the percentage of item 2 divided by item 1 and found that the percentage we obtained agreed with the percentage printed on the report. We then multiplied item 3 by that percentage and found the amount we calculated to be in agreement with the</p>

DIRECT MARKETING CONCEPTS, INC.
 AGREED-UPON PROCEDURES AND FINDINGS
 PERIOD JANUARY 1, 2003 THROUGH JUNE 30, 2004

ATTACHMENT A

<u>Order Section</u>	<u>Order Page</u>	<u>Description of information requested by the Preliminary Injunction Order dated June 23, 2004</u>	<u>Procedures</u>	<u>Findings</u>
VI. B. 4. cont'd			<p><u>E. Development Costs</u></p> <p>1. We requested from Direct Marketing Concepts, Inc. and ITV Direct, Inc. a report showing all the costs of developing the infomercials related to Supreme Greens with MSM, from the date of the first incurred cost through June 30, 2004.</p> <p>2. We math checked the report entitled "Supreme Greens Accounting, Development Costs January 1, 2003 through June 30, 2004."</p> <p><u>F. Summary of All Sales and Marketing Costs</u></p> <p>1. We requested that Direct Marketing Concepts, Inc. and ITV Direct, Inc. provide to us a summary report showing all costs incurred in connection with the sales and marketing of Supreme Greens with MSM.</p> <p>2. We traced the five components of the report to other reports.</p>	<p>amount printed on the report as "Shipping Expense Applied to Supreme Greens Net Revenues, at above percentage rate."</p> <p>1. We obtained from ITV Direct, Inc. a report entitled "Supreme Greens Accounting, Development Costs January 1, 2003 through June 30, 2004. [This report was extracted from the Quickbooks general ledger system maintained by ITV Direct, Inc.]</p> <p>2. We found that the grand total of the report we calculated agreed with the grand total printed on the last page of the report.</p> <p>1. We obtained from Direct Marketing Concepts, Inc. a summary report entitled "Supreme Greens Direct Costs" which shows all of the direct costs related to the sale and marketing of Supreme Greens with MSM during the period from the date of the first sale through June 30, 2004.</p> <p>2. We traced the media costs to the report entitled "Supreme Greens Media Costs By Month (paid by ITV Direct, Inc.) and found that the grand total of that report agreed with the amount printed on the line</p>

Page 19 of 28

ITV 00537

DIRECT MARKETING CONCEPTS, INC.
 AGREED-UPON PROCEDURES AND FINDINGS
 PERIOD JANUARY 1, 2003 THROUGH JUNE 30, 2004

ATTACHMENT A

<u>Order Section</u>	<u>Order Page</u>	<u>Description of information requested by the Preliminary Injunction Order dated June 23, 2004</u>	<u>Procedures</u>	<u>Findings</u>
VI. B. 4. cont'd				<p>labeled "Media Costs" on the report entitled "Supreme Greens Direct Costs." We traced the product costs to the report entitled "Cost of Supreme Greens Product Sold" and found that the grand total of that report agreed with the amount printed on the line labeled "Product Costs." We traced the shipping costs to the report entitled "Supreme Greens Shipping Expenses For the Period January 1, 2003 through June 30, 2004." and found that the calculated shipping costs allocated to the sales of Supreme Greens with MSM on that report agreed with the amount printed on the line labeled "Shipping Costs." We traced the packaging costs to the report entitled "Supreme Greens Packaging Expense" and found that the calculated packaging costs allocated to the sales of Supreme Greens with MSM on that report agreed with the amount printed on the line labeled "Packaging Costs." We traced the development costs to the report entitled "Supreme Greens Accounting, Development Costs January 1, 2003 through June 30, 2004" and found that the grand total of that report agreed with the amount printed on the line labeled "Development Costs."</p> <p>3. We added up the dollar amounts associated with the five components of the report and found that our calculated total was one cent higher than the printed amount of "Total Direct Costs." This discrepancy was</p>

3. We math checked the report entitled "Supreme Greens Direct Costs."

Page 20 of 28

ITV 00538

DIRECT MARKETING CONCEPTS, INC.
 AGREED-UPON PROCEDURES AND FINDINGS
 PERIOD JANUARY 1, 2003 THROUGH JUNE 30, 2004

ATTACHMENT A

<u>Order Section</u>	<u>Order Page</u>	<u>Description of information requested by the Preliminary Injunction Order dated June 23, 2004</u>	<u>Procedures</u>	<u>Findings</u>
VI. B. 4. cont'd				caused by the packaging and shipping costs being carryover calculated amount rather than being input amounts, as were the others. The difference, then, was due to rounding.
VI. B. 5.	25	<p>"[A]ll net profits collected and obtained directly or through any other corporation, partnership, limited liability corporation, or other entity, in connection with the sales in the United States of Supreme Greens with MSM."</p> <p>This was interpreted to be net of an allocation of overhead to the sales of Supreme Greens with MSM per a conference call discussion on 7/2/04 with Daniel Kaufman, a lawyer with the Federal Trade Commission.</p>	<p>1. We requested that Direct Marketing Concepts, Inc. and ITV Direct, Inc. provide to us a summary report showing the net profits derived from the sale of Supreme Greens with MSM during the period from the first sale through June 30, 2004.</p> <p>2. We requested that Direct Marketing Concepts, Inc. provide to us a report showing the allocation of overhead to the sales of Supreme Greens with MSM for the period August 16, 2003 through June 30, 2004.</p> <p>3. We traced the three input components of the report "Supreme Greens Overhead Application" to other reports and recalculated the results.</p>	<p>1. We obtained from Direct Marketing Concepts, Inc. and ITV Direct, Inc. a summary report showing the net profits derived from the sale of Supreme Greens with MSM during the period from the first sale through June 30, 2004, entitled "Supreme Greens Accounting Net Profit (Loss) For the period January 1, 2003 through June 30, 2004."</p> <p>2. We obtained from Direct Marketing Concepts, Inc. a report entitled "Supreme Greens Overhead Allocation For the Period January 1, 2003 through June 30, 3004."</p> <p>3. We traced the item labeled "Total Net Revenues, from Trial Balance" ("item 1") to the "Adjusted Trial Balance Combined Activity For the Period August 16, 2003 through June 30, 2004," which had a subtotal for net revenue and found the amounts to be in agreement. We traced the item labeled "Total Selling, General & Administrative Expenses, from Trial Balance" ("item 2") to the "Adjusted Trial Balance Combined Activity For the Period August 16, 2003 through June 30,</p>

DIRECT MARKETING CONCEPTS, INC.
 AGREED-UPON PROCEDURES AND FINDINGS
 PERIOD JANUARY 1, 2003 THROUGH JUNE 30, 2004

ATTACHMENT A

<u>Order Section</u>	<u>Order Page</u>	<u>Description of information requested by the Preliminary Injunction Order dated June 23, 2004</u>	<u>Procedures</u>	<u>Findings</u>
VI. B. 5. cont'd				2004," which had a subtotal for Selling, General & Administrative Expenses and found the amounts to be in agreement. [We noted that the Selling, General & Administrative Expenses on the "Adjusted Trial Balance Combined Activity For the Period August 16, 2003 through June 30, 2004" did not include any of the direct costs detailed in the information provided for Order Section VI. B. 4. above.] We traced the item labeled "Supreme Greens Net Revenue" ("item 3") to the "Net Revenues" total on the report "Supreme Greens Net Revenues" and found the amounts to be in agreement. We then recalculated the percentage of item 2 divided by item 1 and found that the percentage we obtained agreed with the percentage printed on the report. We then multiplied item 3 by that percentage and found the amount we calculated to be in agreement with the amount printed on the report as "Overhead Applied to Supreme Greens Net Revenues, at above percentage rate."
VI. B. 6.	25	"[A]ll transfers of assets between the Defendants and any related or affiliated corporate entities or individuals in excess of Ten thousand and 00/100 dollars (\$10,000) since January 2003."	1. We requested from Direct Marketing Concepts, Inc. and ITV Direct, Inc. reports showing all credits recorded in all cash accounts (i. e., all cash disbursements and transfers) for the period January 1, 2003 through June 30, 2004, exclusive of payroll, sorted by pay date, in ascending date order from January 1, 2003.	1. We obtained from Direct Marketing Concepts, Inc. a report entitled "Credits to ALL Cash Accounts, January 1, 2003 through June 30, 2004" and from ITV Direct, Inc. a report entitled "All Credits to All Cash Accounts, January 2003 through June 2004." These data were extracted from the databases of reconciled transactions in the Quickbooks general ledger systems utilized by

Page 22 of 28

DIRECT MARKETING CONCEPTS, INC.
 AGREED-UPON PROCEDURES AND FINDINGS
 PERIOD JANUARY 1, 2003 THROUGH JUNE 30, 2004

ATTACHMENT A

<u>Order Section</u>	<u>Order Page</u>	<u>Description of information requested by the Preliminary Injunction Order dated June 23, 2004</u>	<u>Procedures</u>	<u>Findings</u>
VI. B. 6. cont'd			<p>2. We requested from Direct Marketing Concepts, Inc. and ITV Direct, Inc. reports showing all credits to all cash accounts (i. e., all cash disbursements and transfers) over \$10,000 for the period January 1, 2003 through June 30, 2004, exclusive of payroll, sorted by payment date, in ascending date order from January 1, 2003, with a verification total of all payments listed on this schedule. We requested that a verification total of all items be printed on each report.</p>	<p>both companies. The data were then "frozen" by the companies and converted into an Excel format so that the data could be sorted by date and by payee. [These reports represented disbursements exclusive of payroll.] We received from both Direct Marketing Concepts, Inc. and ITV Direct, Inc. printouts of all disbursements, exclusive of payroll, generated from the each company's Quickbooks system, with a verification total, as well as the Excel versions entitled "Credits to ALL Cash Accounts, January 1, 2003 through June 30, 2004" (Direct Marketing Concepts, Inc.) and "All Credits to All Cash Accounts, January 2003 through June 2004" (ITV Direct, Inc.). We found the verification totals of each version to be in agreement for each company.</p> <p>2. We obtained from Direct Marketing Concepts, Inc. a report entitled "Credits > \$10,000 to ALL Cash Accounts, January 1, 2003 through June 30, 2004" and from ITV Direct, Inc. a report entitled "Credits > \$10K to All Cash Accounts, January 2003 through June 2004," both sorted by payment date. Each of the two reports had a verification total. [These reports represented disbursements exclusive of payroll.] As indicated above, these reports were extracted from the reports entitled "Credits to ALL Cash Accounts, January 1, 2003 through June 30, 2004" (Direct</p>

Page 23 of 28

DIRECT MARKETING CONCEPTS, INC.
 AGREED-UPON PROCEDURES AND FINDINGS
 PERIOD JANUARY 1, 2003 THROUGH JUNE 30, 2004

ATTACHMENT A

<u>Order Section</u>	<u>Order Page</u>	<u>Description of information requested by the Preliminary Injunction Order dated June 23, 2004</u>	<u>Procedures</u>	<u>Findings</u>
VI. B. 6. cont'd			<p>3. We compared each of the two reports showing all credits to all cash accounts (i. e., all cash disbursements and transfers) over \$10,000 for the period January 1, 2003 through June 30, 2004, exclusive of payroll (as described in #2 immediately above) to the respective complete reports showing all credits to all cash accounts (i. e., all cash disbursements and transfers) for the period January 1, 2003 through June 30, 2004, exclusive of payroll (as described in #1 immediately above) to verify that all payments over \$10,000 on the complete list (#1 above) were also on the respective lists of payments over \$10,000 (#2 above), except for the transfers between cash accounts within each company.</p>	<p>Marketing Concepts, Inc.) and "All Credits to All Cash Accounts, January 2003 through June 2004" (ITV Direct, Inc.) by sorting the data to list only those credits over \$10,000. Transfers between cash accounts within each company were excluded. Transfers between the two companies were included.</p> <p>3. We found that all payments on each of the two reports of all credits to all cash accounts (i. e., all cash disbursements and transfers) over \$10,000 for the period January 1, 2003 through June 30, 2004, exclusive of payroll (as described in #2 immediately above) were also on the respective complete reports of all credits to all cash accounts (i. e., all cash disbursements and transfers) for the period January 1, 2003 through June 30, 2004, exclusive of payroll (as described in #1 immediately above), except for the transfers between cash accounts within each company. We also found that all payments over \$10,000 on either of the two complete reports of all credits to all cash accounts (i. e., all cash disbursements and transfers) for the period January 1, 2003 through June 30, 2004 (as described in #1 immediately above) were also on either of the respective reports of all credits to all cash accounts (i. e., all cash disbursements and transfers) over \$10,000 for the period January 1, 2003 through June 30, 2004 (as described in #2 immediately above).</p>

Page 24 of 28

ITV 00542

DIRECT MARKETING CONCEPTS, INC.
 AGREED-UPON PROCEDURES AND FINDINGS
 PERIOD JANUARY 1, 2003 THROUGH JUNE 30, 2004

ATTACHMENT A

<u>Order Section</u>	<u>Order Page</u>	<u>Description of information requested by the Preliminary Injunction Order dated June 23, 2004</u>	<u>Procedures</u>	<u>Findings</u>
VI. B. 6. cont'd			<p>4. We requested from Direct Marketing Concepts, Inc. and ITV Direct, Inc. reports showing all credits to all cash accounts (i. e., all cash disbursements and transfers) over \$10,000 for the period January 1, 2003 through June 30, 2004, exclusive of payroll, with a primary sort by payee name and a secondary sort by payment date within the payee name sort, again with a verification total of payments shown on this schedule.</p> <p>5. We compared the verification totals of each of the two reports described in items #2 and #4 immediately above (one sorted by payee and one sorted by date) to determine if they were in agreement and, therefore, that the databases were identical.</p>	<p>again, exclusive of payroll and except for the transfers between cash accounts within each company.</p> <p>4. We obtained from Direct Marketing Concepts, Inc. a report entitled "Credits > \$10,000 to ALL Cash Accounts, January 1, 2003 through June 30, 2004" and from ITV Direct, Inc. a report entitled "Credits > \$10K to All Cash Accounts, January 2003 through June 2004," both with a primary sort by payee name and a secondary sort by payment date within the payee name sort. [These reports represented disbursements exclusive of payroll.]</p> <p>5. We found the verification totals on each of the two versions of "Credits > \$10,000 to ALL Cash Accounts, January 1, 2003 through June 30, 2004" (from Direct Marketing Concepts, Inc.), one sorted by payee and the other by date, to be in agreement. We also found and the verification totals on each of the two versions of "Credits > \$10K to All Cash Accounts, January 2003 through June 2004" (from ITV Direct, Inc.), one sorted by payee and the other by date, to be in agreement. We also compared the individual items for "the Defendants and any related or affiliated corporate entities or individuals" listed on each of the two versions of "Credits > \$10,000 to ALL Cash Accounts, January 1, 2003 through June 30, 2004" (from Direct Marketing</p>

Page 25 of 28

DIRECT MARKETING CONCEPTS, INC.
 AGREED-UPON PROCEDURES AND FINDINGS
 PERIOD JANUARY 1, 2003 THROUGH JUNE 30, 2004

ATTACHMENT A

<u>Order Section</u>	<u>Order Page</u>	<u>Description of information requested by the Preliminary Injunction Order dated June 23, 2004</u>	<u>Procedures</u>	<u>Findings</u>
VI. B. 6. cont'd			<p>6. We requested that Direct Marketing Concepts, Inc. and ITV Direct, Inc. review the respective reports showing all credits to all cash accounts (i. e., all cash disbursements and transfers) over \$10,000 for the period January 1, 2003 through June 30, 2004, exclusive of payroll, with a primary sort by payee name and a secondary sort by payment date within the payee name sort, and remove all payees other than "the Defendants and any related or affiliated corporate entities or individuals" from the report.</p> <p>7. We compared the listing of all credits to all cash accounts (i. e., all cash disbursements and transfers) over \$10,000 for the period January 1, 2003 through June 30, 2004, exclusive of payroll, made to "the</p>	<p>Concepts, Inc.) and each of the two versions of "Credits > \$10K to All Cash Accounts, January 2003 through June 2004" (from ITV Direct, Inc.) and found that all such individual listings were identical on each of the two sets of lists and that there were no other listings for "the Defendants and any related or affiliated corporate entities or individuals" on either list sorted by payee that were not also on the other list sorted by date. [These reports represented disbursements exclusive of payroll.]</p> <p>6. We received from Direct Marketing Concepts, Inc. and ITV Direct, Inc. reports entitled "Credits > \$10,000 to ALL Cash Accounts, January 1, 2003 through June 30, 2004 - to 'the Defendants and any related or affiliated corporate entities or individuals'" (from Direct Marketing Concepts, Inc.) and "Credits > \$10K to All Cash Accounts, January 2003 through June 2004 - to 'the Defendants and any related or affiliated corporate entities or individuals'" (from ITV Direct, Inc.). [These reports represented disbursements exclusive of payroll.]</p> <p>7. We found that the payments listed on the reports "Credits > \$10,000 to ALL Cash Accounts, January 1, 2003 through June 30, 2004 - to 'the Defendants and any related or affiliated corporate entities or</p>

Page 26 of 28

DIRECT MARKETING CONCEPTS, INC.
 AGREED-UPON PROCEDURES AND FINDINGS
 PERIOD JANUARY 1, 2003 THROUGH JUNE 30, 2004

ATTACHMENT A

<u>Order Section</u>	<u>Order Page</u>	<u>Description of information requested by the Preliminary Injunction Order dated June 23, 2004</u>	<u>Procedures</u>	<u>Findings</u>
VI. B. 6. cont'd			<p>Defendants and any related or affiliated corporate entities or individuals" (as described in #6 immediately above) to the complete listing of all credits to all cash accounts (i. e., all cash disbursements and transfers) over \$10,000 for the period January 1, 2003 through June 30, 2004 (as described in #4 immediately above) to verify that all payments over \$10,000 to any of "the Defendants and any related or affiliated corporate entities or individuals" on the complete list (#4 above) were also on the list of payments over \$10,000 to "the Defendants and any related or affiliated corporate entities or individuals" (#6 above).</p>	<p>individuals" (from Direct Marketing Concepts, Inc.) and "Credits > \$10K to All Cash Accounts, January 2003 through June 2004 – to 'the Defendants and any related or affiliated corporate entities or individuals'" (from ITV Direct, Inc.) comprised all payments over \$10,000, exclusive of payroll, to the parties listed on page 1 of the Preliminary Injunction Order as to Defendants Direct Marketing Concepts, Inc., ITV Direct, Inc., and Donald W. Barrett and to any other "related or affiliated corporate entities or individuals" known to us at this time. We also found that there were no other payments over \$10,000, exclusive of payroll to 'the Defendants and any related or affiliated corporate entities or individuals" that were on the complete reports of "Credits > \$10,000 to ALL Cash Accounts, January 1, 2003 through June 30, 2004" (from Direct Marketing Concepts, Inc.) or "Credits > \$10K to All Cash Accounts, January 2003 through June 2004" (from ITV Direct, Inc.) that were not also on the reports "Credits > \$10,000 to ALL Cash Accounts, January 1, 2003 through June 30, 2004 – to 'the Defendants and any related or affiliated corporate entities or individuals'" (from Direct Marketing Concepts, Inc.) or "Credits > \$10K to All Cash Accounts, January 2003 through June 2004 – to 'the Defendants and any related or affiliated corporate entities or individuals'" (from ITV Direct, Inc.) [Again,</p>

Page 27 of 28

ATTACHMENT A

DIRECT MARKETING CONCEPTS, INC.
 AGREED-UPON PROCEDURES AND FINDINGS
 PERIOD JANUARY 1, 2003 THROUGH JUNE 30, 2004

<u>Order Section</u>	<u>Order Page</u>	<u>Description of information requested by the Preliminary Injunction Order dated June 23, 2004</u>	<u>Procedures</u>	<u>Findings</u>
VI. B. 6. cont'd				these reports represented disbursements exclusive of payroll.]
VI. B. 7.	25	<p>"[T]he location and amount of all assets of the Defendants, including all assets held either (1) by any Defendant in this action, (2) for Barrett's, Direct Marketing Concepts, Inc.'s or ITV's benefit, or (3) under any Defendants' direct or indirect control, jointly or severally."</p> <p>For the purposes of this engagement, this was interpreted to be compiled balance sheets, without disclosures (i. e., footnotes) of Direct Marketing Concepts, Inc. and ITV Direct, Inc., both as of 6/30/04 per a conference call discussion on 7/2/04 with Daniel Kaufman, a lawyer with the Federal Trade Commission.</p>	<p>1. We requested that Direct Marketing Concepts, Inc. and ITV Direct, Inc. provide to us balance sheets for each of the two entities as of June 30, 2004, prepared from each company's general ledger.</p> <p>2. We requested that Direct Marketing Concepts, Inc. and ITV Direct, Inc. provide to us trial balances as of June 30, 2004.</p> <p>3. We traced the June 30, 2004 asset and liability balances on the each balance sheet to the respective Adjusted Trial Balance as of June 30, 2004.</p>	<p>1. We obtained from Direct Marketing Concepts, Inc. and ITV Direct, Inc. balance sheets for each of the two entities as of June 30, 2004. These balance sheets were derived from the Quickbooks general ledger systems utilized by Direct Marketing Concepts, Inc.</p> <p>2. We obtained from each of Direct Marketing Concepts, Inc. and ITV Direct, Inc. an Adjusted Trial Balance as of June 30, 2004. [See above discussion about adjusting entries.]</p> <p>3. We found the amounts on each of the two reports for each of the companies to be in agreement. [It should be noted that while there is a line item on the ITV Direct, Inc. balance sheet labeled "Due to Direct Marketing Concept" in the amount of \$8,329,970.00, there is no corresponding line item on the balance sheet of Direct Marketing Concepts, Inc. reflecting a due from ITV Direct, Inc. The corresponding amount on the financial statements of Direct Marketing Concepts, Inc. is included in cost of sales.]</p>

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CAPPSEALS, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
DIRECT MARKETING CONCEPTS, INC.,)	
ITV DIRECT, INC., DIRECT	)	C.A. No. 05-11907-JLT
FULFILLMENT, LLC, DONALD)	
BARRETT, and ROBERT MAIHOS,)	
)	
Defendants.)	
)	

**AFFIDAVIT OF SCOTT SILVERMAN IN SUPPORT OF CAPPSEALS INC.'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

EXHIBIT F: PART TWO

CONFIDENTIAL

DIRECT MARKETING CONCEPTS, INC.

APPENDIX TO REPORT ON AGREED-UPON PROCEDURES

ITV 00547

SCHEDULES

- 1. Supreme Greens Revenues By Month**
- 2. Supreme Greens Refunds By Month**
- 3. Supreme Greens Net Revenues**
- 4. Supreme Greens Direct Costs**
- 5. Supreme Greens Media Costs By Month**
- 6. Cost of Supreme Greens Product Sold**
- 7. Inventory Report**
- 8. Supreme Greens Shipping Expenses**
- 9. Supreme Greens Packaging Expense**
- 10. Supreme Greens Net Profit (Loss)**
- 11. Supreme Greens Overhead Allocation**
- 12. Transfers Over \$10K – Direct Marketing**
- 13. Transfers Over \$10K – ITV Direct**
- 14. Balance Sheet – Direct Marketing**
- 15. Balance Sheet – ITV Direct**

Direct Marketing Concepts, Inc.
Supreme Greens Accounting
Prepared by: Wayne P. Callahan
8/12/2004

Supreme Greens Revenues By Month

For the Period January 1, 2003 through June 30, 2004

<u>Month of Revenue</u>	<u>Count</u>	<u>Product Revenue</u> <u>SubTotal</u>	<u>Shipping Revenue</u>	<u>Total Revenue</u>
Jun-04	1536	\$ 173,450.49	\$16,173.25	\$ 189,623.74
May-04	1979	210,294.80	20,621.29	230,916.09
Apr-04	8013	826,250.87	87,737.84	913,988.71
Mar-04	14318	1,513,532.74	161,521.87	1,675,054.61
Feb-04	22611	1,521,839.23	166,259.49	1,688,098.72
Jan-04	29257	2,309,192.20	265,927.46	2,575,119.66
Dec-03	21954	2,248,110.22	244,340.70	2,492,450.92
Nov-03	35156	2,144,203.25	245,905.72	2,390,108.97
Oct-03	23049	2,178,456.34	276,611.64	2,455,067.98
Sep-03	9380	853,464.65	110,516.19	963,980.84
Jan - Aug 03	431	28,648.51	3,684.74	32,333.25
Subtotal	167684	\$ 14,007,443.30	\$ 1,599,300.19	\$ 15,606,743.49

Adjustment to Account for Supreme Greens Sales recorded in the
General Ledger but not recorded in the Sales System

446,057.00

TOTAL SUPREME GREENS REVENUES

\$ 16,052,800.49

Revenue recognition is upon product shipment.

**Direct Marketing Concepts, Inc.
Supreme Greens Accounting
Prepared by: Wayne P. Callahan
7/29/2004**

Supreme Greens Refunds by Month

For the Period January 1, 2003 through June 30, 2004

<u>Month of Refund</u>	<u>Count</u>	<u>Product Refund</u>	<u>Shipping Refund</u>	<u>Total Refund</u>
Jun-04	240	\$ (22,054.07)	(\$723.44)	\$ (22,777.51)
May-04	544	(47,805.75)	(314.05)	(48,119.80)
Apr-04	1182	(106,937.49)	(1,915.84)	(108,853.33)
Mar-04	2073	(177,240.86)	(3,580.33)	(180,821.19)
Feb-04	1907	(158,692.80)	(4,976.34)	(163,669.14)
Jan-04	2600	(240,651.96)	(6,709.07)	(247,361.03)
Dec-03	1987	(188,115.97)	(7,676.24)	(195,792.21)
Nov-03	2057	(193,427.12)	(8,198.95)	(201,626.07)
Oct-03	1428	(136,027.14)	(6,790.70)	(142,817.84)
Sep-03	451	(43,936.35)	(4,272.17)	(48,208.52)
Jan - Aug 03	11	(1,409.23)	(166.85)	(1,576.08)
SubTotal Refunds	14480	\$ (1,316,298.74)	\$ (45,323.98)	\$ (1,361,622.72)
Refunds granted by manual checks				\$ (7,741.53)
Grand Total Refunds				\$ (1,369,364.25)

**Direct Marketing Concepts, Inc.
Supreme Greens Accounting
Prepared by: Wayne P. Callahan
8/12/2004**

**Supreme Greens Accounting
Supreme Greens Net Revenues
For the Period January 1, 2003 through June 30, 2004**

Total Gross Sales	\$ 16,052,800.49
Total Refunds	<u>(1,369,364.25)</u>
Net Revenues	\$ 14,683,436.24

**Direct Marketing Concepts, Inc.
Supreme Greens Accounting
Prepared by: Wayne P. Callahan
8/13/2004**

Supreme Greens Direct Costs

For the Period January 1, 2003 through June 30, 2004

Media Costs	\$7,881,870.90
Product Costs	3,975,452.61
Shipping Costs	1,029,071.21
Packaging Costs	97,236.14
Development Costs	<u>38,045.95</u>
Total Direct Costs	\$13,021,676.80

Direct Marketing Concepts, Inc.
Supreme Greens Accounting
Prepared by: Wayne P. Callahan
8/9/2004

Supreme Greens Media Costs By Month (paid by ITV Direct, Inc.)

For the Period January 1, 2003 through June 30, 2004

<u>Month of Media Cost</u>	<u>PAX Media</u>	<u>ALL Others</u>	<u>TOTAL</u>
Jun-04	\$0.00	\$0.00	\$0.00
May-04	0.00	0.00	\$0.00
Apr-04	57,927.50	284,582.47	\$342,509.97
Mar-04	270,703.75	453,283.02	\$723,986.77
Feb-04	215,411.25	642,293.64	\$857,704.89
Jan-04	181,623.75	938,167.72	\$1,119,791.47
Dec-03	371,587.70	1,016,920.43	\$1,388,508.13
Nov-03	349,371.25	939,614.97	\$1,288,986.22
Oct-03	402,453.75	825,877.28	\$1,228,331.03
Sep-03	430,333.75	417,315.29	\$847,649.04
Aug-03	41,395.00	28,728.38	\$70,123.38
Jul-03	0.00	2,040.00	\$2,040.00
Jun-03	0.00	2,040.00	\$2,040.00
May-03	0.00	2,550.00	\$2,550.00
Apr-03	0.00	2,040.00	\$2,040.00
Mar-03	0.00	2,040.00	\$2,040.00
Feb-03	0.00	1,530.00	\$1,530.00
Jan-03	0.00	2,040.00	\$2,040.00
Total Supreme Greens Media Costs	\$2,320,807.70	\$5,561,063.20	\$7,881,870.90

Accrual Basis

The costs listed above for the months of January 2003 through April 2003 were, in fact, for the months of January 2004 through April 2004. The dates had been entered into the system incorrectly. They have been left on this report with their recorded dates since, in any case, the costs were incurred during the period January 1, 2003 through June 30, 2004, the period covered by the report.

Direct Marketing Concepts, Inc.
Supreme Greens Accounting
Cost of Supreme Greens Product Sold

Prepared by Wayne P. Callahan 8-9-2004
For the Period January 2003 through June 2004

Trans #	Type	Date	Num	Name	Debit
9,284	Check	06/17/2003	WIRE	Healthy Solutions, Inc.	16,250.00
11,721	Check	08/19/2003	3953	Healthy Solutions, Inc.	1,095.00
11,934	Bill	08/19/2003	1057	Healthy Solutions, Inc.	81,250.00
12,860	Check	09/26/2003	WIRE	Direct Business Concepts	83,382.00
13,635	Bill	09/26/2003	2	Direct Business Concepts	74,490.00
13,639	Bill	09/26/2003	3	Direct Business Concepts	13,000.00
13,638	Bill	10/03/2003	4	Direct Business Concepts	91,260.00
13,637	Bill	10/08/2003	5	Direct Business Concepts	9,750.00
13,637	Bill	10/08/2003	5	Direct Business Concepts	3,250.00
13,636	Bill	10/10/2003	6	Direct Business Concepts	128,609.00
13,636	Bill	10/10/2003	6	Direct Business Concepts	19,565.00
14,607	Bill	10/17/2003	10	Direct Business Concepts	65,520.00
13,716	Bill	10/20/2003	7	Direct Business Concepts	8,502.11
14,880	Bill	10/21/2003	11	Direct Business Concepts	13,000.00
14,609	Bill	10/24/2003	12	Direct Business Concepts	265,356.00
14,610	Bill	11/03/2003	13	Direct Business Concepts	124,020.00
14,608	Bill	11/03/2003	9	Direct Business Concepts	7,500.00
14,611	Bill	11/07/2003	14	Direct Business Concepts	158,385.50
14,788	Bill	11/18/2003	15	Direct Business Concepts	246,480.00
14,788	Bill	11/18/2003	15	Direct Business Concepts	31,460.00
14,701	Check	11/18/2003	4445	Direct Business Concepts	98,174.00
15,081	Bill	11/25/2003	16	Direct Business Concepts	287,400.00
15,082	Bill	12/03/2003	17	Direct Business Concepts	241,920.00
15,430	Bill	12/08/2003	18	Direct Business Concepts	214,272.00
15,859	Bill	12/12/2003	19	Direct Business Concepts	241,920.00
15,858	Bill	12/19/2003	20	Direct Business Concepts	300,024.00
16,690	Bill	12/31/2003	21	Direct Business Concepts	300,078.00
16,691	Bill	01/09/2004	22	Direct Business Concepts	185,472.00
16,692	Bill	01/14/2004	23	Direct Business Concepts	299,520.00
16,692	Bill	01/14/2004	23	Direct Business Concepts	24,192.00
16,693	Bill	01/21/2004	24	Direct Business Concepts	345,600.00
16,693	Bill	01/21/2004	24	Direct Business Concepts	30,546.00
16,997	Bill	01/29/2004	25	Direct Business Concepts	288,000.00
16,997	Bill	01/29/2004	25	Direct Business Concepts	30,216.00
17,074	Bill	02/06/2004	26	Direct Business Concepts	288,000.00
17,074	Bill	02/06/2004	26	Direct Business Concepts	30,240.00
Total Supreme Green Purchases					<u>4,647,698.61</u>
Ending Inventory 6/30/2004					(672,246.00)
Net Supreme Greens Product Cost					3,975,452.61

ITV 00554

Date: 7-1-4

Inventory Report

Product	with phone#	w/o phone#
Alka Slim	xxxxx	11,072
Calcium Caps	64,910	14,090
Calcium Gels	49,384	11,302
Calcium Supreme Caps	xxxxx	3,948
Children Calcium Caps	1,449	xxxxx
E-8 Daily Caps	97,550	xxxxx
Green Tea	34,510	xxxxx
Kilos of Calcium	67	xxxxx
Liquid Essential	15,418	xxxxx
P.H. Test Kits	23,600	10,100
P.H. Test Samples	32,000	xxxxx
Silver from the Sea	xxxxx	8,867
Supreme Green Caps	103,607	42
Supreme Green Powder	7,777	615
T-Bag "1 month supply"	72,240	xxxxx
<i>Dr. Day Products</i>		
Dr Day workbook	23,130	xxxxx
Dr. Day "Confusion" cassette	5	xxxxx
Dr. Day "Diseases" video	20,827	xxxxx
Dr. Day "Cancer" video	3,549	xxxxx
Dr. Day "God" video	19,058	xxxxx
Dr. Day "Light" video	2	xxxxx
Dr. Day "AltMed" video	-	xxxxx
Dr. Day "He Loves Me" video	124	xxxxx
Dr. Day "Drugs" video	97	xxxxx
Dr. Day "Double Blind" video	146	xxxxx
Dr. Day "Believing" video	140	xxxxx
Dr. Day "Cancer" DVD	9,942	xxxxx
Dr. Day "Interview" video	13,019	xxxxx
Dr. Day "Interview" DVD	4,759	xxxxx

112,041 Total Count SG

\$ 672,246.00 Total Cost @ \$6.00 cost per unit

**Direct Marketing Concepts, Inc.
Supreme Greens Accounting
Prepared by: Wayne P. Callahan
8/12/2004**

Supreme Greens Shipping Expenses

For the Period January 1, 2003 through June 30, 2004

Total Net Revenues, from Trial Balance		\$36,202,461.55
Total Shipping Expenses from Trial Balance		2,537,206.56
Shipping Expense as percentage of Total Net Revenues		7.01%
Supreme Greens Net Revenues	\$	14,683,436.24
Shipping Expense Allocated to Supreme Greens Net Revenues, at above percentage rate.	\$	1,029,071.21

**Direct Marketing Concepts, Inc.
Supreme Greens Accounting
Prepared by: Wayne P. Callahan
8/13/2004**

Supreme Greens Packaging Expense

For the Period January 1, 2003 through June 30, 2004

Total Net Revenues, from Trial Balance	\$	36,202,461.55
Total Packaging Expenses from Trial Balance	\$	239,738.67
Packaging Expense as percentage of Total Net Revenues		0.66%
Supreme Greens Net Revenues	\$	14,683,436.24
Packaging Expense Applied to Supreme Greens Net Revenues, at above percentage rate.	\$	97,236.14

**Direct Marketing Concepts, Inc.
Supreme Greens Accounting
Prepared by: Wayne P. Callahan
8/13/2004**

**Supreme Greens Accounting
Net Profit (Loss)**

For the Period January 1, 2003 through June 30, 2004

Total Gross Supreme Greens Revenues	\$ 16,052,800.49
Total Supreme Greens Refunds	<u>(1,369,364.25)</u>
Net Supreme Greens Revenues	\$ 14,683,436.24
Less Supreme Greens Direct Costs	<u>(13,021,676.80)</u>
Net Revenues Less Direct Costs	\$ 1,661,759.44
Overhead Allocated to Net Supreme Greens Revenues	<u>(4,138,687.91)</u>
Net Loss on Sales of Supreme Greens	<u><u>\$ (2,476,928.47)</u></u>

**Direct Marketing Concepts, Inc.
Supreme Greens Accounting
Prepared by: Wayne P. Callahan
8/12/2004**

Supreme Greens Overhead Allocation

For the Period January 1, 2003 through June 30, 2004

Total Net Revenues, from Trial Balance	\$	36,202,461.55
Total Selling, General & Administrative Expenses, from Trial Balance		10,204,061.73
Overhead Rate as percentage of Total Net Revenues		28.19%
Supreme Greens Net Revenues	\$	14,683,436.24
Overhead Allocated to Supreme Greens Net Revenues, at above percentage rate.	\$	4,138,687.91

**Transfers > \$10,000 to the Defendants and Any Related or Affiliated Corporate Entities
or Individuals**

January 1 2003 through June 30 2004

Trans # Jan '03 - Jun 04	Date	Check #	Payee	Credit
8611	06/03/2003	WIRE	Direct Fulfillment	25,000.00
12860	09/26/2003		Direct Business Concepts	83,382.00
13943	10/10/2003	4421	Direct Business Concepts	58,502.11
13652	10/28/2003	WIRE	Direct Business Concepts	87,490.00
13783	11/03/2003	WIRE	Direct Business Concepts	104,260.00
14029	11/13/2003	4445	Direct Business Concepts	98,174.00
14701	11/21/2003		Direct Business Concepts	98,174.00
14847	12/01/2003	4558	Direct Business Concepts	265,356.00
14628	12/01/2003	WIRE	Direct Business Concepts	65,520.00
14881	12/01/2003	4561	Direct Business Concepts	13,000.00
14848	12/06/2003	4559	Direct Business Concepts	124,020.00
15079	12/16/2003	4622	Direct Business Concepts	158,385.50
15268	12/22/2003	4666	Direct Business Concepts	277,940.00
15644	01/02/2004	4772	Direct Business Concepts	287,400.00
16100	01/12/2004	4809	Direct Business Concepts	241,920.00
16251	01/19/2004	4867	Direct Business Concepts	214,272.00
16618	01/26/2004	4925	Direct Business Concepts	241,920.00
16763	02/05/2004	5001	Direct Business Concepts	300,024.00
4594	02/13/2003	1013	Direct Fulfillment, LLC	65,000.00
4624	02/20/2003	1040	Direct Fulfillment, LLC	65,000.00
4666	02/26/2003	1066	Direct Fulfillment, LLC	25,000.00
4678	03/03/2003	1072	Direct Fulfillment, LLC	50,000.00
6007	03/04/2003	Wire	Direct Fulfillment, LLC	50,000.00
6015	03/07/2003	Wire	Direct Fulfillment, LLC	15,000.00
6024	03/10/2003	Wire	Direct Fulfillment, LLC	35,000.00
6026	03/11/2003	Wire	Direct Fulfillment, LLC	20,000.00
6029	03/13/2003	Wire	Direct Fulfillment, LLC	60,000.00
6030	03/13/2003	Wire	Direct Fulfillment, LLC	50,000.00
6035	03/18/2003	Wire	Direct Fulfillment, LLC	50,000.00
6036	03/18/2003	Wire	Direct Fulfillment, LLC	50,000.00
6037	03/19/2003	Wire	Direct Fulfillment, LLC	85,000.00
6043	03/27/2003	Wire	Direct Fulfillment, LLC	60,000.00
6048	04/01/2003	Wire	Direct Fulfillment, LLC	35,000.00
6051	04/03/2003	Wire	Direct Fulfillment, LLC	60,000.00
6053	04/08/2003	Wire	Direct Fulfillment, LLC	50,000.00
6057	04/10/2003	Wire	Direct Fulfillment, LLC	50,000.00
6060	04/15/2003	Wire	Direct Fulfillment, LLC	50,000.00
7197	04/18/2003		Direct Fulfillment, LLC	85,504.56
6334	04/18/2003	Wire	Direct Fulfillment, LLC	35,000.00
7785	05/07/2003	WIRE	Direct Fulfillment, LLC	80,000.00
8006	05/12/2003	WIRE	Direct Fulfillment, LLC	15,000.00
7966	05/14/2003	WIRE	Direct Fulfillment, LLC	50,000.00
8297	05/23/2003	WIRE	Direct Fulfillment, LLC	75,000.00
11250	07/28/2003		Direct Fulfillment, LLC	25,000.00
16545	01/21/2004	4920	Donald W. Barrett	25,000.00
17100	02/13/2004	5079	Donald W. Barrett	25,000.00
17286	02/20/2004	5169	Donald W. Barrett	100,000.00
18021	03/18/2004	5368	Donald W. Barrett	50,000.00
13006	10/06/2003	4227	Eileen Barrett	63,500.00
10842	07/15/2003	3699	Health Solutions	25,250.00
14829	12/01/2003	4557	Health Solutions	25,250.00
9284	06/17/2003	WIRE	Healthy Solutions, Inc.	16,250.00
11935	08/19/2003	WIRE	Healthy Solutions, Inc.	81,250.00
5339	03/20/2003	1461	ITV Direct	20,000.00
5391	03/20/2003	1476	ITV Direct	15,000.00
5528	03/31/2003	1543	ITV Direct	20,000.00
5612	04/04/2003	1437	ITV Direct	35,000.00

Direct Marketing Concepts, Inc.

Transfers > \$10,000 to the Defendants and Any Related or Affiliated Corporate Entities or Individuals

January 1 2003 through June 30 2004

Trans #	Date	Check #	Payee	Credit
6359	04/16/2003	JE-164	ITV Direct	30,000.00
6336	04/18/2003	1756	ITV Direct	150,000.00
6596	04/23/2003		ITV Direct	100,000.00
7401	04/29/2003	WIRE	ITV Direct	60,000.00
7501	04/30/2003	WIRE	ITV Direct	40,000.00
7786	05/07/2003	WIRE	ITV Direct	50,000.00
8005	05/12/2003	WIRE	ITV Direct	100,000.00
8136	05/16/2003	WIRE	ITV Direct	100,000.00
8252	05/20/2003	WIRE	ITV Direct	75,000.00
8610	06/03/2003	WIRE	ITV Direct	75,000.00
8827	06/09/2003	WIRE	ITV Direct	75,000.00
9279	06/17/2003		ITV Direct	140,000.00
10483	07/08/2003	WIRE	ITV Direct	120,000.00
10818	07/13/2003	WIRE	ITV Direct	50,000.00
10823	07/17/2003	WIRE	ITV Direct	30,000.00
11006	07/18/2003	WIRE	ITV Direct	30,000.00
11047	07/21/2003		ITV Direct	30,000.00
11212	07/25/2003		ITV Direct	124,000.00
11251	07/28/2003		ITV Direct	150,000.00
11411	08/01/2003		ITV Direct	38,000.00
11453	08/05/2003		ITV Direct	105,000.00
11595	08/12/2003		ITV Direct	150,000.00
11710	08/19/2003		ITV Direct	165,000.00
12017	08/25/2003		ITV Direct	120,000.00
12089	08/28/2003	WIRE	ITV Direct	70,000.00
12103	09/02/2003		ITV Direct	230,000.00
12262	09/08/2003	WIRE	ITV Direct	200,000.00
12560	09/17/2003	WIRE-2	ITV Direct	188,000.00
12699	09/19/2003	WIRE	ITV Direct	20,000.00
12638	09/23/2003	WIRE	ITV Direct	180,000.00
12799	09/23/2003	WIRE	ITV Direct	43,781.00
12912	10/01/2003	WIRE	ITV Direct	170,000.00
12991	10/01/2003	WIRE	ITV Direct	80,000.00
13005	10/02/2003	WIRE	ITV Direct	13,000.00
13021	10/06/2003	WIRE	ITV Direct	200,000.00
13251	10/07/2003	WIRE	ITV Direct	101,390.00
13244	10/14/2003	WIRE	ITV Direct	255,000.00
13371	10/15/2003	WIRE	ITV Direct	200,000.00
13455	10/20/2003		ITV Direct	250,000.00
13498	10/22/2003	WIRE	ITV Direct	50,000.00
13601	10/24/2003	WIRE	ITV Direct	255,000.00
13615	10/27/2003	WIRE	ITV Direct	250,000.00
13629	10/29/2003	WIRE	ITV Direct	100,000.00
13765	11/03/2003	WIRE	ITV Direct	220,000.00
13924	11/07/2003	WIRE	ITV Direct	100,000.00
14013	11/17/2003	WIRE	ITV Direct	370,000.00
14669	11/19/2003	WIRE	ITV Direct	16,300.00
14698	11/24/2003	WIRE	ITV Direct	205,000.00
14748	11/25/2003	WIRE	ITV Direct	90,000.00
14813	12/01/2003	WIRE	ITV Direct	350,000.00
14979	12/08/2003	WIRE	ITV Direct	230,000.00
15067	12/08/2003	WIRE	ITV Direct	50,000.00
15110	12/10/2003	WIRE	ITV Direct	95,000.00
15219	12/15/2003	WIRE	ITV Direct	200,000.00
15194	12/17/2003	WIRE	ITV Direct	200,000.00
15453	12/23/2003	WIRE	ITV Direct	200,000.00
15482	12/29/2003	WIRE	ITV Direct	270,000.00
15629	01/05/2004	WIRE	ITV Direct	190,000.00

**Transfers > \$10,000 to the Defendants and Any Related or Affiliated Corporate Entities
or Individuals**

January 1 2003 through June 30 2004

Trans #	Date	Check #	Payee	Credit
15897	01/09/2004	WIRE	ITV Direct	220,000.00
16237	01/13/2004	WIRE	ITV Direct	230,000.00
16274	01/20/2004	WIRE	ITV Direct	275,000.00
16526	01/26/2004	WIRE	ITV Direct	350,000.00
16783	02/02/2004	WIRE	ITV Direct	35,000.00
16784	02/03/2004	WIRE	ITV Direct	100,000.00
16831	02/04/2004	WIRE	ITV Direct	200,000.00
16849	02/09/2004	WIRE	ITV Direct	275,000.00
17040	02/12/2004	WIRE	ITV Direct	225,000.00
17098	02/17/2004		ITV Direct	275,000.00
17244	02/23/2004	WIRE	ITV Direct	250,000.00
17371	02/25/2004	WIRE	ITV Direct	50,000.00
17377	03/02/2004	WIRE	ITV Direct	350,000.00
17655	03/10/2004	WIRE	ITV Direct	100,000.00
17768	03/16/2004	WIRE	ITV Direct	200,000.00
18071	03/22/2004	WIRE	ITV Direct	150,000.00
18102	03/23/2004	WIRE	ITV Direct	50,000.00
18219	03/25/2004	WIRE	ITV Direct	175,000.00
18467	03/30/2004	WIRE	ITV Direct	300,000.00
18644	04/09/2004	WIRE	ITV Direct	100,000.00
18694	04/13/2004	WIRE	ITV Direct	275,000.00
18845	04/19/2004	WIRE	ITV Direct	175,000.00
18962	04/23/2004	WIRE	ITV Direct	100,000.00
18964	04/26/2004	WIRE	ITV Direct	180,000.00
19031	04/28/2004		ITV Direct	100,000.00
19216	05/04/2004	WIRE	ITV Direct	175,000.00
19237	05/10/2004		ITV Direct	135,000.00
19236	05/13/2004	WIRE	ITV Direct	75,000.00
19445	05/17/2004	WIRE	ITV Direct	275,000.00
19638	05/24/2004		ITV Direct	150,000.00
19720	06/01/2004	WIRE	ITV Direct	160,000.00
19907	06/08/2004		ITV Direct	75,000.00
20048	06/10/2004	WIRE	ITV Direct	50,000.00
20088	06/14/2004		ITV Direct	200,000.00
20098	06/14/2004	WIRE	ITV Direct	50,000.00
20183	06/18/2004	WIRE	ITV Direct	100,000.00
20255	06/21/2004	WIRE	ITV Direct	190,000.00
20361	06/29/2004	WIRE	ITV Direct	250,000.00
6452	02/21/2003	WAGE	Maihos	13,751.69
7404	04/29/2003	3057	Robert A Maihos	275,000.00
12455	09/10/2003	4119	Robert A Maihos	50,000.00
12456	09/11/2003	4120	Robert A Maihos	30,000.00
12497	09/15/2003	4127	Robert A Maihos	38,000.00
16544	01/21/2004	4919	Robert A Maihos	25,000.00
17101	02/13/2004	5080	Robert A Maihos	25,000.00
17376	03/01/2004	5175	Robert A Maihos	100,000.00
18020	03/18/2004	5367	Robert A Maihos	50,000.00
18726	04/15/2004	5452	Robert A Maihos	200,000.00
20114	06/15/2004	5852	Robert A Maihos	40,000.00
20119	06/16/2004	5853	Robert A Maihos	60,000.00
4682	03/03/2003	1073	Robert Maihos	25,000.00
5607	04/03/2003	1586	Robert Maihos	100,000.00
5611	04/04/2003	1585	Robert Maihos	430,000.00

ITV Direct

**Transfers > \$10,000 to the Defendants and Any Related or Affiliated Corporate Entities
or Individuals**

<u>Trans #</u>	<u>Date</u>	<u>Check #</u>	<u>Payee</u>	<u>Credit</u>
Jan '03 - Jun 04				
1073	08/06/2003	WIRE	Direct Marketing Concepts, Inc.	50,000.00
1387	09/18/2003	WIRE	Direct Marketing Concepts, Inc.	70,000.00
1702	10/17/2003	WIRE	Direct Marketing Concepts, Inc.	122,000.00
2218	12/05/2003	WIRE	Direct Marketing Concepts, Inc.	80,000.00
331	04/23/2003		Healthy Solutions	16,250.00
7	03/20/2003	1007	Robert Maihos	15,000.00
33	03/28/2003	1030	Robert Maihos	20,000.00

ITV 000563

12:20 PM
08/13/04
Accrual Basis

Direct Marketing Concepts, Inc.
Balance Sheet
As of June 30, 2004

	<u>Jun 30, 04</u>
ASSETS	
Current Assets	
Checking/Savings	
Cash	175,153.20
Total Checking/Savings	175,153.20
Accounts Receivable	
Accounts Receivable	341,801.09
Total Accounts Receivable	341,801.09
Other Current Assets	
Credit Card Sales Receivable	340,363.69
Employee Advances - Receivable	1,700.00
Product Inventory	1,945,450.00
Total Other Current Assets	2,287,513.69
Total Current Assets	2,804,467.98
Fixed Assets	
Computer Equipment	332,017.93
Office Equipment	219,574.49
Automobiles	78,758.23
Machinery & Equipment	37,567.65
Furniture & Office Equipment	63,764.39
Leasehold Improvements	7,425.00
Accumulated Depreciation	-371,931.00
Total Fixed Assets	367,176.69
Other Assets	
Prepaid Media Buys	344,248.74
Deposits & Intangible Assets	1,119,484.81
Total Other Assets	1,463,733.55
TOTAL ASSETS	<u>4,635,378.22</u>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
Accounts Payable	2,323,460.13
Total Accounts Payable	2,323,460.13
Credit Cards	
Credit Cards Payable	-2,430.47
Total Credit Cards	-2,430.47
Total Current Liabilities	2,321,029.66

ITV 000564

12:20 PM
08/13/04
Accrual Basis

Direct Marketing Concepts, Inc.
Balance Sheet
As of June 30, 2004

	<u>Jun 30, 04</u>
Long Term Liabilities	
Notes Payable	<u>73,497.36</u>
Total Long Term Liabilities	<u>73,497.36</u>
 Total Liabilities	 2,394,527.02
Equity	
Capital Stock	200.00
Retained Earnings	1,866,628.37
Sub-S Corp Property Distrib.	-2275863.04
Net Income	<u>2,649,885.87</u>
Total Equity	<u>2,240,851.20</u>
 TOTAL LIABILITIES & EQUITY	 <u><u>4,635,378.22</u></u>

ITV 000565

12:37 PM
08/13/04
Accrual Basis

ITV Direct
Balance Sheet
As of June 30, 2004

	<u>Jun 30, 04</u>
ASSETS	
Current Assets	
Checking/Savings	-149,090.28
Checking - Beverly National	-149,090.28
Total Checking/Savings	
Accounts Receivable	6,784.50
Accounts Receivable	6,784.50
Total Accounts Receivable	
Total Current Assets	-142,305.78
Fixed Assets	
Computer Equipment	41,822.93
Studio Equipment -Teleprompter	7,032.50
Total Fixed Assets	48,855.43
TOTAL ASSETS	<u>-93,450.35</u>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	300.00
Accounts Payable	300.00
Total Accounts Payable	
Other Current Liabilities	
Due to Direct Marketing Concept	8,329,970.00
Total Other Current Liabilities	8,329,970.00
Total Current Liabilities	8,330,270.00

ITV 000566

12:37 PM
08/13/04
Accrual Basis

ITV Direct
Balance Sheet
As of June 30, 2004

	<u>Jun 30, 04</u>
Total Liabilities	8,330,270.00
Equity	
Retained Earnings	-1,409,677.55
Net Income	-7,014,042.80
Total Equity	<u>-8,423,720.35</u>
TOTAL LIABILITIES & EQUITY	<u>-93,450.35</u>

ITV 000567

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CAPPSEALS, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
DIRECT MARKETING CONCEPTS, INC.,)	
ITV DIRECT, INC., DIRECT	)	C.A. No. 05-11907-JLT
FULFILLMENT, LLC, DONALD)	
BARRETT, and ROBERT MAIHOS,)	
)	
Defendants.)	
)	

**AFFIDAVIT OF SCOTT SILVERMAN IN SUPPORT OF CAPPSEALS INC.'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

EXHIBIT G

2:12 PM
06/21/04
Accrual Basis

Direct Marketing Concepts, Inc.

Find Report

All Transactions

Type	Date	Num	Name	Memo	Amount
Bill	02/06/2004	26	Direct Business Concepts	PO 1101	-318,240.00 not paid
Bill	01/29/2004	25	Direct Business Concepts	PO 1101	-318,216.00 not paid
Bill	01/21/2004	24	Direct Business Concepts	PO 1101	-376,146.00 not paid
Bill	01/14/2004	23	Direct Business Concepts	PO 1101	-323,712.00 not paid
Bill	01/09/2004	22	Direct Business Concepts	PO 1101	-185,472.00 not paid
Bill	12/31/2003	21	Direct Business Concepts	PO 1101	-300,078.00 not paid
Bill	12/19/2003	20	Direct Business Concepts	PO 1101	-300,024.00
Bill	12/12/2003	19	Direct Business Concepts	PO 1078	-241,920.00
Bill	12/08/2003	18	Direct Business Concepts		-214,272.00
Bill	12/03/2003	17	Direct Business Concepts		-241,920.00
Bill	11/25/2003	16	Direct Business Concepts		-287,400.00
Bill	11/18/2003	15	Direct Business Concepts		-277,940.00
Bill	11/07/2003	14	Direct Business Concepts	PO 1078	-158,385.50
Bill	11/03/2003	9	Direct Business Concepts		-7,500.00
Bill	11/03/2003	13	Direct Business Concepts	PO 1078	-124,020.00
Bill	10/24/2003	12	Direct Business Concepts	PO 1073 and 1078	-265,356.00
Bill	10/21/2003	11	Direct Business Concepts	PO 1076	-13,000.00
Bill	10/20/2003	7	Direct Business Concepts	Freight charges for shipping through 10-10-03	-8,502.11
Bill	10/17/2003	10	Direct Business Concepts	PO 1071 & 1073	-65,520.00
Bill	10/10/2003	6	Direct Business Concepts	PO 1071	-148,174.00
Bill	10/08/2003	5	Direct Business Concepts	Cheng	-13,000.00
Bill	10/03/2003	4	Direct Business Concepts	PO 1063	-91,260.00
Bill	09/26/2003	2	Direct Business Concepts	PO 1063	-74,490.00
Bill	09/26/2003	3	Direct Business Concepts	PO 1071	-13,000.00
Bill	08/19/2003	1057	Healthy Solutions, Inc.	50% down on PO 1057	-81,250.00
Bill	07/15/2003	8	Health Solutions	PO # 1041 50% down	-50,500.00
Bill	04/08/2003		Healthy Solutions, Inc.	Reimbursement for air travel April 9-12	-1,806.00
Check	12/29/2003	WIRE	Direct Business Concepts		-4,000.00
Check	12/23/2003	WIRE	Direct Business Concepts		-4,000.00
Check	11/21/2003		Direct Business Concepts		-98,174.00
Check	09/26/2003		Direct Business Concepts		-83,382.00
Check	08/19/2003	3953	Healthy Solutions, Inc.	Invoice 08010	-1,095.00
Check	06/17/2003	WIRE	Healthy Solutions, Inc.		-16,250.00
					-4,708,004.61

ITV 00291

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CAPPSEALS, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
DIRECT MARKETING CONCEPTS, INC.,)	
ITV DIRECT, INC., DIRECT	)	C.A. No. 05-11907-JLT
FULFILLMENT, LLC, DONALD)	
BARRETT, and ROBERT MAIHOS,)	
)	
Defendants.)	
)	

**AFFIDAVIT OF SCOTT SILVERMAN IN SUPPORT OF CAPPSEALS INC.'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

EXHIBIT H

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FEDERAL TRADE COMMISSION,
Plaintiff,

v.

DIRECT MARKETING CONCEPTS, INC., d/b/a
TODAY'S HEALTH and DIRECT FULFILLMENT;
ITV DIRECT, INC., d/b/a DIRECT FULFILLMENT;
DONALD W. BARRETT;
HEALTHY SOLUTIONS, LLC d/b/a DIRECT
BUSINESS CONCEPTS;
HEALTH SOLUTIONS, INC.;
ALEJANDRO GUERRERO, a/k/a ALEX GUERRERO;
MICHAEL HOWELL; GREG GEREMESZ;
TRIAD ML MARKETING, INC.; KING MEDIA, INC.;
and ALLEN STERN,
Defendants.

CIVIL ACTION
NO. 04-11136-GAO

**PRELIMINARY INJUNCTION ORDER
AS TO DEFENDANTS DIRECT MARKETING
CONCEPTS, INC., ITV DIRECT, INC., AND DONALD W. BARRETT**

June 23, 2004

The Federal Trade Commission ("FTC" or "Commission") filed a complaint against the above listed defendants pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and moved for a preliminary injunction with other equitable relief against defendants Direct Marketing Concepts, Inc. ("DMC"), ITV Direct, Inc. ("ITV"), and Donald W. Barrett ("Barrett") (collectively, the "Defendants") pursuant to Fed. R. Civ. P. 65. The Court having considered the pleadings, declarations and exhibits filed in support of and opposing said motion, and after hearing on the motion, enters the following order:

Findings of Fact

On the basis of the affidavits presented, the Court finds the following facts:

1. The FTC is an independent agency of the United States Government created by the FTC Act, 15 U.S.C. §§ 41-58. The Commission is charged, among other things, with enforcement of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, which respectively prohibit deceptive acts or practices in or affecting commerce, and false advertisements for food, drugs, devices, services, or cosmetics in or affecting commerce.
2. DMC and ITV are both Massachusetts corporations with their principal places of business in Saugus and Beverly Massachusetts, respectively. Barrett is the President and a director of both DMC and ITV, and he directs, controls, formulates, or participates in the acts and practices of both entities. Since at least August 2003, Barrett, DMC and ITV have advertised, promoted, offered for sale, and/or distributed a dietary supplement product called Supreme Greens with MSM ("Supreme Greens").
3. Barrett, DMC and ITV produced and widely disseminated a thirty-minute "infomercial" for Supreme Greens shown on cable television stations. Additionally, the Defendants marketed Supreme Greens on their website, www.todayshealth.com.
4. The infomercial features Donald Barrett and Alejandro Guerrero a/k/a Alex Guerrero discussing the health benefits of Supreme Greens – in a setting that mimics a conventional talk show – and includes the following passages:

BARRETT: Dr. Guerrero claims that most chronic degenerative diseases – such as cancer, arthritis, diabetes, even the number one killer out there, heart disease – can and are being cured and there are natural healing

techniques being suppressed in this country. We have a very controversial show, so stay with us.

Complaint Ex. 6 at 3-4.

BARRETT: And now here's the question: If I alkalize my body, am I going to come up with one of these chronic degenerative diseases?

GUERRERO: No.

BARRETT: Such as cancer, arthritis –

GUERRERO: No.

BARRETT: How can you say that so confidently?

GUERRERO: I'm very confident in saying that, primarily because of the clinical studies we've done. I've seen it in my – in my – in my clinical practice. I've seen it every day in my clinical practice.

BARRETT: Tell me about –

GUERRERO: I treat patients that have conditions –

BARRETT: – the studies – tell me about a study that you've done with – with chronic disease.

GUERRERO: Well, based on acid alkaline principles we wanted to take groups of people that had degenerative conditions – and, to me, it didn't really matter what their degenerative condition was and I preferred them to have a variety of conditions. So I certainly just didn't want to have a base of liver cancer or bone cancer or prostate cancer or breast cancer. I wanted to, you know, lump them into a group and

see what the response would be over time. Well, now it's been – you know, now we're going into, you know, eight years and within a five-year period of time we took 200 people that had a variety of degenerative conditions. They weren't all the same conditions, they –

BARRETT: Were they terminal?

GUERRERO: They were diagnosed as terminal.

BARRETT: Two hundred people – now, eight years later, how many of them are still alive?

GUERRERO: Well, I've got – out of that – out of those 200 people that were terminal we lost eight. Eight passed away.

BARRETT: And that's amazing. People must have been amazed by those studies.

GUERRERO: Yeah. I mean, it was – it was really exciting to see at the time. And that's really what solidified, for me, this – you know, the concepts of acid and alkaline balance. And so, now, over the years I've just been afraid to deviate from what has worked for me in my clinic.

Complaint Ex. 6 at 11-13.

BARRETT: Now, explain. When a patient comes to your office – whether they have cancer or arthritis, diabetes, you start them on a few standard supplements.

GUERRERO: Right.

BARRETT: One being a product called Supreme Greens, the other one being a coral calcium type product.

GUERRERO: Yes.

Complaint Ex. 6 at 15.

BARRETT: Okay. Alex, why do so many people lose weight on the product? I know that a lot of people get on the product to either help with their diabetes or maybe their heart disease or even cancer, but they lose weight as a byproduct. How come?

Complaint Ex. 6 at 22.

GUERRERO: It's great for women that are pregnant because it certainly applies --

BARRETT: So she can take it when she's pregnant?

GUERRERO: No question. My wife took it, my wife took it through all of her pregnancies.

BARRETT: And you have five children?

GUERRERO: We have five children.

BARRETT: Okay.

GUERRERO: And she took it through all of her pregnancies, never had to deal with, you know, prenatal vitamins, never got morning sickness.

Complaint Ex. 6 at 22.

BARRETT: What are the other nutrients in there and does it interfere with any medication?

GUERRERO: Because I have, you know, a wide range of patients in different conditions, I needed to ensure that the formula was synergistic with all medications. And so, you know, the Supreme Greens with MSM is synergistic with medication. There is no contra-indication.

BARRETT: So anybody out – anybody –

GUERRERO: (Inaudible).

BARRETT: – anybody out there basically on any type of medication, they can take the Supreme Greens product?

GUERRERO: Yes.

Complaint Ex. 6 at 29-30.

5. The Defendants' website made the following statements about Supreme Greens:

If you or someone you love is suffering from Cancer, Arthritis, Osteoporosis, Fibromyalgia, Heart Disease, Diabetes, Heartburn, Fatigue, Excess Weight, or simply the everyday ravages of aging – it's time to start down the path to a healthier lifestyle . . .

A number of health problems and degenerative conditions have been linked to highly acidic cell pH:

- Cancer
- Arthritis
- * * *
- High Blood Pressure
- High Cholesterol
- * * *
- Diabetes

* * *

- Endometriosis

* * *

- Overweight
- Heart Disease

So How Do You Rebalance Your Cells pH Levels and Get the Minerals and Nutrients You Need?

According to Health professionals, supplements are needed to give the body what it needs. But where most supplements either provide vitamins or proteins, Supreme Greens works to help rebalance your cell pH.

* * *

Supreme Greens was formulated by Dr. Alex Guerrero, a renowned physician who has focused his career on working with people with various degenerative and chronic ailments. His breakthrough supplement has already helped thousands of people with cancer, diabetes, arthritis, lupus, fibromyalgia, chronic fatigue syndrome, and many others.

Complaint Ex. 7 at 2-3.

6. The Commission has alleged that through the above representations, and others, the Defendants have falsely or without substantiation represented that Supreme Greens can cure, treat or prevent cancer, diabetes, arthritis and heart disease, and that Supreme Greens can be safely used by pregnant women, children, and consumers taking any medications.

7. The Commission has provided the declarations of two experts: Barrie Cassileth, Ph.D, Chief of the Integrative Medicine Service of the Memorial Sloan-Kettering Cancer Center and Landon King, M.D., Associate Professor of Medicine and Biological Chemistry at the

John Hopkins University School of Medicine. Together, their declarations express the opinions that the above claims are either false or not supported by reliable scientific evidence.

8. The Defendants have not proffered any experts to contradict the opinions of Drs. Cassileth and King.

Continuity Program

9. The Defendants have at times caused consumers to incur unauthorized charges on their credit and debit cards by enrolling them in an automatic shipment program for a supplement called E-8 Daily – without their prior approval – when they ordered Supreme Greens. The Defendants maintain they have taken steps to prevent recurrence of such unauthorized charges, but do not dispute that they occurred in the past.

Danger of Recurrence

10. In the Fall of 2003, the FTC contacted counsel for the Defendants and informed them that the Supreme Greens infomercial made claims that were false and/or unsubstantiated. Shortly thereafter, the Defendants agreed to withdraw the infomercial and replace it with a substantially modified version that did not make the above challenged claims.

11. Notwithstanding their above promise to withdraw the original infomercial, the Defendants continued to run the original version of the Supreme Greens infomercial at least through April 2004.

Consumer Injury

12. Although the Court has not yet seen any specific sales figures, the Defendants have not disputed the Commission's contention that sales through the infomercial likely totaled in the tens of millions of dollars. Additionally, it is undisputed that the bulk of the sales revenues went to DMC, ITV and Barrett, and not to the remaining defendants in this litigation.

Asset Dissipation & Potential Document Destruction

13. Two individuals who have engaged in business transactions with DMC and/or ITV have provided documentary evidence, in the form of bank records, that demonstrates that although the declarants' companies had contracted with DMC, Defendant Barrett requested that declarants' companies send hundreds of thousands of dollars directly to Barrett instead of to DMC. Additionally, one of the declarants says that he, at Barrett's request, forwarded hundreds of thousands of dollars to a separate company controlled by Barrett rather than to DMC.

14. Three former employees of DMC have provided declarations stating that they witnessed corporate funds at DMC and ITV being used to pay for non-business purchases, such as home furnishings and personal vehicles.

15. Two declarants provided declarations stating that in or about June 2003, after Barrett learned that the FTC had concerns about one of his earlier infomercials – for a product called Coral Calcium Daily – Barrett withdrew funds from certain accounts and distributed the funds to close relatives.

16. One declarant stated that in or about June 2003, at Barrett's direction, he removed approximately 40-50 boxes relating to Coral Calcium Daily from DMC's warehouse to his own storage facility because Barrett stated that he was concerned about the FTC pursuing him with respect to the product.

17. Defendants contend that the declarants relied on by the FTC are biased and untrustworthy and that their statements are false. It is difficult to make a credibility assessment on the basis of affidavits alone. Defendants make a plausible showing of bias. Nevertheless, even disregarding the most accusatory assertions, some of which are conclusory, the statements do

show at least an ability on the part of Defendants to move assets among related entities and/or persons.

Conclusions of Law

18. This Court has jurisdiction over the subject matter of this case and over these Defendants.

19. Venue in this District is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

20. The acts and practices of the Defendants are or have been in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

21. This Court has authority to grant a preliminary injunction and other appropriate relief pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b) and Rule 65 of the Federal Rules of Civil Procedure. FTC v. Gem Merch. Corp., 87 F.3d 466, 468-69 (11th Cir. 1996); FTC v. World Travel Vacation Brokers, Inc., 861 F.2d 1020, 1025-26 (7th Cir. 1988).

22. Section 13(b) authorizes the issuance of such preliminary relief upon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest. 15 U.S.C. § 53(b); FTC v. Patriot Alcohol Testers, Inc., No. 91-11812-C, 1992 WL 27334, at *3 (D. Mass. Feb. 13, 1992).

Likelihood of Success on the Merits

23. The Commission has demonstrated a likelihood of success on the merits. Section 5(a) of the FTC Act prohibits deceptive acts and practices in or affecting commerce. Section 12 prohibits the dissemination of false advertising in order to induce the purchase of foods, drugs, devices, or cosmetics. To prevail under Sections 5(a) and 12, the FTC must demonstrate that

"first, there is a representation, omission, or practice that, second, is likely to mislead consumers acting reasonably under the circumstances, and third, the representation, omission, or practice is material." FTC v. Pantron I Corp., 33 F.3d 1088, 1095 (9th Cir. 1994) (citing Cliffdale Assocs., Inc., 103 F.T.C. 110, 164-65 (1984)). The FTC has established all three of these sufficiently for the Court to grant a preliminary injunction.

24. As demonstrated by the infomercial and website excerpts above, and despite the use of infrequent and/or inconspicuous disclaimers, the Defendants have made the claims that Supreme Greens can cure, treat or prevent cancer, diabetes, arthritis and heart disease, and that Supreme Greens can be safely used by pregnant women, children, and consumers taking any medications.

25. The Commission is likely to prevail in demonstrating the falsity and/or lack of substantiation of these claims, based on the uncontradicted declarations of Drs. Cassileth and King.

26. The Defendants' misrepresentations are likely to mislead reasonable consumers. Consumers have no obligation to doubt the veracity of express claims, and false or unsubstantiated claims are inherently "likely to mislead." In re Thompson Med. Co., 104 F.T.C. 648, 788, 818-19 (1984) (discussing with approval FTC's Policy Statement on Deception (Oct. 14, 1983)), aff'd 791 F.2d 189 (D.C. Cir. 1986).

27. Given the express nature and importance of the challenged claims, and the fact that they go to the core reasons why consumers buy Supreme Greens, they are presumed to be material. FTC v. SlimAmerica, Inc., 77 F. Supp.2d 1263, 1272 (S.D. Fla. 1999) ("Express claims or deliberately-made implied claims used to induce the purchase of a particular product or service are presumed to be material.").

28. In addition, the airing of the infomercial for Supreme Greens in a talk-show format with only limited disclaimers before and after the broadcast is likely to mislead consumers and constitute a deceptive act or practice in violation of Section 5.

29. Further, the Defendants' practice of causing charges for automatic shipments of E-8 Daily dietary supplement to be billed to consumers' credit or debit cards without the consumers' authorization has caused or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers themselves and is not outweighed by countervailing benefits to consumers or competition. Therefore, this practice likely constitutes an unfair practice, in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

30. The Commission is also likely to succeed in holding the Defendants jointly and severally liable for these violations of the FTC Act. DMC and ITV produced and disseminated the Supreme Greens infomercial. Their purported reliance upon co-defendant Alex Guerrero's representations regarding the product – even if true – is not a valid defense to a violation of the FTC Act. Moreover, as early as the Fall of 2003, the Defendants were on notice from the Commission as to the suspect nature of the Supreme Greens claims.

31. Individuals such as Barrett may be liable for corporate practices if they have "participated directly in the practices or acts or had authority to control them," and had some knowledge of the practices. FTC v. Amy Travel Serv., Inc., 875 F.2d 564, 573 (7th Cir. 1989). Authority to control can be evidenced by "active involvement in business affairs and the making of corporate policy, including assuming the duties of a corporate officer." Id.

32. The information presented indicates that Barrett knew as early as the Fall of 2003 that the Supreme Greens claims were suspect, based on the concerns raised by the FTC, yet he

continued to actively participate in making the challenged claims as President and a director of DMC and ITV.

Balance of Equities

33. The Commission brought this action to halt and prevent further violations of federal law and to protect consumers from the marketing of products claimed to prevent and cure life threatening diseases. In such statutory enforcement cases, the government proceeds "not as an ordinary litigant, but as a statutory guardian charged with safeguarding the public interest in enforcing the . . . laws." SEC v. Mgmt. Dynamics, Inc., 515 F.2d 801, 808 (2d Cir. 1975) (securities laws context).

34. The Commission's interest in protecting consumers outweighs the Defendants' interests that would be infringed by the requested injunction. The Defendants have no legitimate interest in engaging in practices that likely violate the FTC Act.

Injunctive Relief is in the Public Interest

35. Immediate injunctive relief is necessary to protect the public from the financial and/or physical harm that results from the Defendants' practices. Consumers suffering from cancer, heart disease, arthritis and diabetes are injured if they purchase Supreme Greens in lieu of pursuing treatments that may offer them real health benefits. In addition, direct economic injury arises from purchasing Supreme Greens under false pretenses and from the Defendants' imposition of charges to consumers' credit or debit cards without their knowledge or authorization.

Necessity for Preliminary Relief

36. There is good cause to believe that immediate and irreparable harm to consumers will result from ongoing violations of Sections 5(a) and 12 of the FTC Act by the Defendants unless they are preliminarily enjoined by order of this Court.

37. Where, as in this case, business operations are permeated by deceptive practices, and there is evidence of on-going transfers of business assets to unknown businesses, Barrett and his relatives, there is a possibility that assets may be dissipated during the pendency of the legal proceedings. An accounting and a restriction on the dissipation of the Defendants' assets is appropriate at this time to ensure the enforceability of any judgment that may be entered. However, should the accounting reveal that the Defendants have, presently are, or are likely to conceal or place assets beyond the Court's reach pending final resolution of this case, the Court will consider additional requests from the Commission for further relief necessary to ensure the enforceability of any judgment, including a freeze of the Defendants' assets and the appointment of a receiver.

38. Weighing the equities and considering the Commission's likelihood of ultimate success, a preliminary injunction is in the public interest, and it is hereby ordered that:

DEFINITIONS

For the purpose of this order, the following definitions shall apply:

1. "DMC" means Direct Marketing Concepts, Inc., d/b/a "Today's Health" and "Direct Fulfillment," a Massachusetts corporation with its principal place of business at 20 Oakpoint Ext., Saugus, MA 01906, and also doing business at 100 Cummings Center, Suite 139F, Beverly, MA 01915, and its divisions, subsidiaries, successors, assigns, and its officers, agents, representatives, and employees.

2. "ITV" means ITV Direct, Inc., d/b/a "Direct Fulfillment," a Massachusetts corporation with its principal place of business at 100 Cummings Center, Suite 506E, Beverly, MA 01915, and its divisions, subsidiaries, successors, assigns, and its officers, agents, representatives, and employees.
3. "Barrett" means Donald W. Barrett, individually and as an officer and director of DMC and ITV.
4. "Defendants" shall mean DMC, ITV, and Barrett, whether acting individually or through any corporation, subsidiary, division, or other entity.
5. "FTC" or "Commission" or "Plaintiff" means the Federal Trade Commission.
6. "Advertising" means any written or verbal statement, illustration or depiction that is designed to effect a sale or create interest in the purchasing of goods or services, whether it appears in a brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, packaging, package insert, label, film, slide, radio, television or cable television, audio program transmitted over a telephone system, program-length commercial ("infomercial"), the Internet, email, or in any other medium.
7. "Promotion" means any written or verbal statement, illustration, or depiction that is designed to effect a sale or create interest in the purchasing of goods or services that is not "advertising," including but not limited to video news releases and press releases.
8. "Endorsement" has the meaning set forth in 16 C.F.R. § 255.0(b).
9. "Substantially similar product" means any dietary supplement containing one or more of the ingredients contained in the proprietary blend of Supreme Greens with MSM.

10. "Assets" means any legal or equitable interest in, right to, or claim to, any real, personal, or intellectual property, including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, receivables (as those terms are defined in the Uniform Commercial Code), and all cash, wherever located.

11. "Continuity program" shall mean any plan, arrangement, or system pursuant to which a consumer receives periodic shipments of products without prior notification by the seller before each shipment or service period, regardless of any trial or approval period allowing the consumer to return or be reimbursed for the product.

12. "Assisting others" means knowingly providing any of the following services to any person or entity: (a) performing customer service functions for any person or entity, including but not limited to, receiving or responding to customer complaints; (b) formulating or providing or arranging for the formulation or provision of any telephone sales script or any other advertising or marketing material for any person or entity; or (c) performing advertising or marketing services of any kind for any person or entity.

13. "Commerce" has the meaning set forth in Section 4 of the FTC Act, 15 U.S.C. § 44.

14. "Competent and reliable scientific evidence" means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

PROHIBITED BUSINESS ACTIVITIES

I.

IT IS ORDERED that the Defendants, directly or through any corporation, partnership, subsidiary, division, trade name, or other entity, and their officers, agents, servants, employees, and all persons and entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, including by facsimile, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Supreme Greens with MSM or any substantially similar product, in or affecting commerce, are hereby preliminarily enjoined from making, or assisting others in making, directly or by implication, including through the use of endorsements or trade names, any representation that such product:

- A. Is an effective treatment, cure, or preventative for cancer;
- B. Is an effective treatment, cure, or preventative for heart disease;
- C. Is an effective treatment, cure, or preventative for diabetes;
- D. Is an effective treatment, cure, or preventative for arthritis; or
- E. Can be taken safely by pregnant women, by infants and children,
or by any person taking any type of medication.

II.

IT IS FURTHER ORDERED that the Defendants, directly or through any corporation, partnership, subsidiary, division, trade name, or other entity, and their officers, agents, servants, employees, and all persons and entities in active concert or participation with any of them who

receive actual notice of this Order by personal service or otherwise, including by facsimile, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Supreme Greens with MSM or any substantially similar product, in or affecting commerce, are hereby preliminarily enjoined from making, or assisting others in making, directly or by implication, including through the use of endorsements or the product name, any representation that such product can prevent, treat, or cure any disease unless, at the time the representation is made, the Defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation.

FORMATTING FOR BROADCAST ADVERTISING

III.

IT IS FURTHER ORDERED that the Defendants, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any product, program, or service, in or affecting commerce, do forthwith cease and desist from creating, producing, selling, or disseminating:

- A. Any advertisement that misrepresents, expressly or by implication, that it is not a paid advertisement; and
- B. Any commercial or other video advertisement fifteen (15) minutes in length or longer or intended to fill a broadcasting or cablecasting time slot of fifteen (15) minutes in length or longer that does not display visually in the same language as the predominant language that is used in the advertisement, in a clear and prominent manner, and for a length of time sufficient for

an ordinary consumer to read, within the first thirty (30) seconds of the commercial and immediately before each presentation of ordering instructions for the product or service, the following disclosure:

"THE PROGRAM YOU ARE WATCHING IS A PAID ADVERTISEMENT
FOR [THE PRODUCT, PROGRAM, OR SERVICE]."

(For the purposes of this provision, the oral or visual presentation of a telephone number or address through which viewers may obtain more information or place an order for the product, program, or service shall be deemed a presentation of ordering instructions so as to require the display of the disclosure provided herein); and

C. Any radio advertisement fifteen (15) minutes in length or longer or intended to fill a time slot of fifteen (15) minutes in length or longer that does not state in the same language as the predominant language that is used in the advertisement, in a clear and prominent manner, and in a volume and cadence sufficient for an ordinary consumer to hear, within the first thirty (30) seconds of the commercial and immediately before each presentation of ordering instructions for the product, program, or service, the following disclosure:

"THE PROGRAM YOU ARE LISTENING TO IS A PAID ADVERTISEMENT
FOR [THE PRODUCT, PROGRAM, OR SERVICE]."

(For the purposes of this provision, the presentation of a telephone number or address through which listeners may obtain more information or place an order for the product, program, or service shall be deemed a presentation of ordering instructions so as to require the stating of the disclosure provided herein.).

CONTINUITY PROGRAM

IV.

IT IS FURTHER ORDERED that:

A. The Defendants, directly or through any corporation, subsidiary, division, trade name, or other entity, and their officers, agents, servants, employees, and all persons and entities in active concert with them who receive actual notice of this Order by personal service or otherwise, including by facsimile, in connection with the manufacturing, labeling, promotion, offering for sale, sale, or distribution of any product, program, or service, in or affecting commerce, are hereby preliminarily enjoined from:

1. Selling or distributing or causing to be sold or distributed products, programs, or services, by means of a Continuity Program without first obtaining the express, informed consent of consumers to participate in that program before any shipment is made; *Provided*, that the consumer's consent will be deemed to be informed for the purpose of this Part IV only if the Defendants clearly and conspicuously disclose, before the consumer consents to any purchase, all material terms and conditions of the Continuity Program, including but not limited to:

- a. the fact that periodic shipments will occur without further action by the consumer;
- b. a description of each good or type of good to be included in each shipment;

- c. the approximate interval between each shipment;
- d. a description of the billing procedure to be employed, including the total cost to be charged to the subscriber's credit or debit card, or otherwise billed to the subscriber, for each shipment;
- e. the minimum number of purchases required under the program, if any;
- f. all material terms and conditions of a guarantee, refund, or return policy if any representation is made about such a policy, or, if the Defendants have a policy of not making refunds or accepting returns, a statement that this is the Defendants' policy; and
- g. a description of the terms and conditions under which, and the procedures by which, a subscriber may cancel further shipments, as set forth in Part IV.C below. Provided further, that the consumer's consent will be deemed to be express for the purpose of this Part IV only if the Defendants obtained the informed consent in a manner which clearly evidences that the consumer is consenting to the terms of the Continuity Program.

2. Making any representation, in any manner, expressly or by implication, that consumers owe money for Continuity Program merchandise shipped to consumers, unless the Defendants have obtained consumers' express, informed consent to receive and pay for the merchandise.

B. The Defendants shall convey the terms and conditions of the Continuity Program to the consumer in the following manner:

1. For any solicitation initiated or completed by telephone, the terms and conditions set forth in Part IV.A above shall be disclosed during that conversation in clear and understandable language;

2. For any solicitation by a print advertisement, direct mail, electronic mail, or by the Internet, the terms and conditions set forth in Part IV.A above shall be disclosed in a clear and prominent manner in close proximity to the ordering instructions, provided that, if the advertisement or mailing contains an order form or coupon on a separate page or document from the advertising material, the disclosure shall be made both in the advertising materials and on the order form or coupon.

C. The Defendants shall provide, in conjunction with each shipment made pursuant to any Continuity Program, a clear and conspicuous description of the terms and conditions under which, and the procedures by which, the subscriber may cancel future shipments.

D. The Defendants shall not ship any product, program, or service to, or mail any bill or dunning communication to, or bill the credit or debit card of any subscriber who, having once subscribed to a Continuity Program and having fulfilled any minimum purchase requirement to which the subscriber has given express informed consent, notifies the Defendants of the subscriber's cancellation of further shipments.

MAINTENANCE OF RECORDS

V.

IT IS FURTHER ORDERED that the Defendants, and their officers, agents, directors, employees, salespersons, independent contractors, subsidiaries, affiliates, successors, assigns and all other persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, including by facsimile, whether acting directly or through any corporation, subsidiary, division or other device, are hereby preliminarily enjoined from:

1. failing to create and maintain books, records, accounts, bank statements, current accountants' reports, and any other data which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Defendants;
2. destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any books, records, tapes, discs, accounting data, checks (fronts and backs), correspondence, forms, advertisements, brochures, manuals, electronically stored data, banking records, customer lists, customer files, invoices, telephone records, ledgers, payroll records, or other documents of any kind, including information stored in computer-maintained form (such as electronic mail), in their possession, and other documents or records of any kind that relate to the business practices or finances of the Defendants; and
3. failing to maintain complete records of any consumer complaints and disputes, whether coming from the consumer or any intermediary, such as a government agency or Better Business Bureau, and any responses made to those complaints or disputes.

ACCOUNTING

VI.

IT IS FURTHER ORDERED that:

A. For the purpose of conducting an accounting relating to the Defendants' sale and marketing of Supreme Greens with MSM, and the assets of Barrett, DMC and ITV and related and affiliated corporate entities, within ten (10) days after entry of this Order the Defendants shall retain an accountant and/or accounting firm (hereinafter "accounting firm") to be selected or approved by the Commission. The Defendants shall bear the costs and fees incurred by the accounting firm in conducting this accounting.

B. In this accounting, the accounting firm shall attempt to ascertain, within sixty (60) days from the date of entry of this Order, the following information, whether the information is located in the United States or outside the territorial United States, and shall prepare a report for the Plaintiff and the Defendants describing:

1. all revenues collected and obtained by the Defendants, directly or through any other corporation, partnership, limited liability corporation, or other entity, in connection with the sale in the United States of Supreme Greens with MSM, and the location and/or transfer of all such revenues;

2. the amount of all refunds provided by the Defendants to consumers, directly or through any other corporation, partnership, limited liability corporation, or other entity, in connection with the sale of Supreme Greens with MSM;

3. information sufficient to show the flows of all monies received by the Defendants, directly or indirectly, from the sale in the United States of Supreme Greens with MSM;

4. all costs and expenses incurred by the Defendants, directly or through any other corporation, partnership, limited liability corporation, or other entity, in connection with the sale or marketing of Supreme Greens with MSM in the United States;

5. all net profits collected and obtained by the Defendants, directly or through any other corporation, partnership, limited liability corporation, or other entity, in connection with the sale in the United States of Supreme Greens with MSM;

6. all transfers of assets between the Defendants and any related or affiliated corporate entities or individuals in excess of Ten thousand and 00/100 dollars (\$10,000) since January 2003; and

7. the location and amount of all assets of the Defendants, including all assets held either (1) by any Defendant in this action, (2) for Barrett's, DMC's or ITV's benefit, or (3) under any Defendants' direct or indirect control, jointly or severally.

C. Such information gathered by and reports prepared by the accounting firm shall be designated as confidential information.

D. The Defendants and any other person or entity served with a copy of this Order, by personal service, facsimile, or otherwise, shall not interfere with the accounting firm's functions and shall fully cooperate and assist the accounting firm in accomplishing the purposes set forth in this Section, including providing access to documents and information located outside the territorial United States and including the gathering and preserving of documents relating to the Defendants' assets.

E. Should the accounting reveal that the Defendants have concealed, presently are concealing, or are likely to conceal or place assets beyond the Court's reach pending final resolution of this case, the Court will consider additional requests from the Commission for further relief necessary to ensure the enforceability of any judgment, including a freeze of the Defendants' assets and the appointment of a receiver.

FINANCIAL STATEMENTS

VII.

IT IS FURTHER ORDERED that:

A. The Defendants each shall prepare and provide to the Commission, within twenty (20) days from entry of this Order, a complete and accurate financial statement, signed under penalty of perjury, on the form attached to this Order as Attachment A (for Barrett) or Attachment B (for DMC and ITV). Barrett also shall include a list of all corporate entities that he has controlled, directly or indirectly, at any point since January 2002 until the present.

B. The Defendants each shall provide the Commission with access to records and documents pertaining to assets of each Defendant that are held by financial institutions outside the territory of the United States, by signing a document entitled "Consent to Release of Financial Records" in the form attached to this Order as Attachment C.

RESTRICTION ON DISSIPATION OF CORPORATE ASSETS

VIII.

IT IS FURTHER ORDERED that DMC and ITV and any of their officers, directors, agents, servants, employees, salespersons, distributors, corporations, subsidiaries, affiliates, successors, assigns, and those persons or entities in active concert or participation with them who

receive actual notice of this Order by personal service, facsimile, or otherwise, are hereby preliminarily enjoined from directly or indirectly selling, liquidating, assigning, transferring, converting, loaning, encumbering, pledging, concealing, dissipating, spending, withdrawing, or otherwise disposing of any funds, real, personal, or intellectual property, or other assets or any interest therein, wherever located, including any assets outside the territorial United States, which are owned and controlled by, or held for the benefit of, in whole or in part, or in the possession of DMC and/or ITV, or any other corporation owned or controlled by DMC and/or ITV, other than those transfers for actual and necessary business operations and expenses that such corporations will reasonably incur, including legal fees associated with ITV Direct, Inc. v. Healthy Solutions, LLC, 04-CV-10421-JLT (D. Mass.); Trudeau v. Direct Mktg. Concepts, Inc., CV 02-02707 (C.D. Cal.); Triad ML Mktg., Inc. v. Direct Mktg. Concepts, Inc., C.A. 03-CV-4321 (E.D. Pa.); HBA Mktg. v. Marine Coral Calcium, C.A. 03-5995 (E.D. Pa.); Triad ML Mktg. v. MXM Essential Formulas, C.A. 03-6047 (E.D. Pa.); and the instant action, FTC v. Direct Mktg. Concepts, Inc., 04-CV-11136-GAO (D. Mass.). DMC and ITV shall not purchase or acquire, in whole or in part, directly or indirectly, any real property without prior permission from the Commission.

DMC and ITV shall maintain copies of documents reflecting such transfers or expenditures for actual and necessary business operations, including but not limited to, books and records of accounts, all financial and accounting records, balance sheets, income statements, and bank records (including monthly statements, canceled checks, records of wire transfers, and check registers). These documents shall be produced to the Commission monthly (by the tenth day of the following month) with respect to transfers or expenditures over Five thousand and 00/100

dollars (\$5,000) from the date of entry of this Order. The funds, property and assets affected by this Paragraph shall include both existing assets and assets acquired after the date of entry of this Order, including without limitation, those acquired by loan or gift.

RESTRICTION ON DISSIPATION OF BARRETT'S ASSETS

IX.

IT IS FURTHER ORDERED that Barrett and his agents, servants, employees, salespersons, distributors, corporations, subsidiaries, affiliates, successors, assigns, and those persons or entities in active concert or participation with him who receive actual notice of this Order by personal service, facsimile, or otherwise, are hereby preliminarily enjoined from directly or indirectly selling, liquidating, assigning, transferring, converting, loaning, encumbering, pledging, concealing, dissipating, spending, withdrawing, or otherwise disposing of any funds, real, personal, or intellectual property, or other assets or any interest therein, wherever located, including any assets outside the territorial United States, which are owned and controlled by, or held for the benefit of, in whole or in part, or in the possession of Barrett, other than those expenditures or transfers for actual and necessary business operations and business and personal expenses that he will reasonably incur, including legal fees associated with ITV Direct, Inc. v. Healthy Solutions, LLC, 04-CV-10421-JLT (D. Mass.); Trudeau v. Direct Mktg. Concepts, Inc., CV 02-02707 (C.D. Cal.); Triad ML Mktg., Inc. v. Direct Mktg. Concepts, Inc., C.A. 03-CV-4321 (E.D. Pa.); HBA Mktg. v. Marine Coral Calcium, C.A. 03-5995 (E.D. Pa.); Triad ML Mktg. v. MXM Essential Formulas, C.A. 03-6047 (E.D. Pa.); and the instant action, FTC v. Direct Mktg. Concepts, Inc., 04-CV-11136-GAO (D. Mass.). Barrett shall not purchase or acquire, in whole or

in part, directly or indirectly, any real property or pay for any significant home improvements or landscaping without prior permission from the Commission.

Barrett shall maintain copies of documents reflecting such transfers or expenditures for actual and necessary business operations and business and personal expenses, including but not limited to, books and records of accounts, all financial and accounting records, balance sheets, income statements, and bank records (including monthly statements, canceled checks, records of wire transfers, and check registers). These documents shall be produced to the Commission monthly (by the tenth day of the following month) with respect to transfers or expenditures over Two thousand five hundred and 00/100 dollars (\$2,500) from the date of entry of this Order. The funds, property and assets affected by this Paragraph shall include both existing assets and assets acquired after the date of entry of this Order, including, without limitation, those acquired by loan or gift.

EXPEDITED DISCOVERY

X.

IT IS FURTHER ORDERED that the Commission is granted leave at any time after service of this Order to depose or demand the production of documents from any person or entity relating to the nature, status, extent, location or other relevant information relating to the Defendants' assets, income, personal or business financial records, or the location of any Defendant or potential Defendant. Seven (7) days shall be deemed sufficient for any such production of documents from the Defendants, and ten (10) days shall be deemed sufficient for any such production of documents from any other person or entity, including but not limited to any bank, savings and loan, financial or brokerage institution, fund, escrow agent, or trustee. The

production of documents submitted pursuant to this provision shall not in any way waive Plaintiff's rights to seek the production of additional documents.

RIGHT OF IMMEDIATE ACCESS

XI.

IT IS FURTHER ORDERED that the Defendants and any other person who receives actual notice of this Order by personal service or otherwise, including by facsimile, shall permit the Commission's employees, agents, and assistants immediate access to any business premises and storage facilities, whether owned, controlled or used by the Defendants, in whole or in part, including but not limited to the offices located at 100 Cummings Center, Beverly, MA 01915 or at 20 Oakpoint Ext., Saugus, MA 01906. The purpose of this access shall be to inspect, copy and inventory documents referring or relating to:

- A. advertising or marketing, including issues relating to safety, of Supreme Greens with MSM;
- B. any business relationship between any of the Defendants and any other business entity;
- C. the financial status of the Defendants, including but not limited to the nature or location of any bank account, safe deposit box, or other asset of the Defendants;
- D. any transaction, correspondence or other communication by or between any consumer and any of the Defendants or any representatives, employees, agents, officers, servants, or assistants of the Defendants; and

E. any action, correspondence or other communication by or between any law enforcement agency, consumer group, or Better Business Bureau and the Defendants, or any representatives, employees, agents, officers, servants, or assistants of the Defendants.

The Commission's representatives may remove original documents from the business premises of the Defendants to make photocopies, provided that the originals are returned within a reasonable period of time. The Defendants shall provide Commission employees, agents and assistants with any necessary means of access to these documents, including but not limited to keys and lock combinations, computer access codes, and storage access information. The Defendants, and their officers, agents, directors, employees, salespersons, independent contractors, subsidiaries, affiliates, successors, assigns and all other persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, including by facsimile, are hereby preliminarily enjoined from interfering with the Commission's right of access described herein.

CONSUMER REPORTS

XII.

IT IS FURTHER ORDERED that the Commission may obtain consumer reports concerning any of the Defendants pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), and that, upon written request, any credit reporting agency from which such reports are requested shall provide them to the Commission.

DISTRIBUTION OF ORDER BY DEFENDANTS

XIII.

IT IS FURTHER ORDERED that the Defendants shall immediately provide a copy of this Order to each affiliate, partner, subsidiary, division, sales entity, successor, assign, officer, director, employee, independent contractor, agent, attorney, fulfillment house, call center, and representative of the Defendants, and within ten (10) days following entry of this Order, shall provide the Commission with an affidavit identifying the names, titles, addresses, and telephone numbers of the persons and entities that the Defendants have served with a copy of this Order in compliance with this provision.

SERVICE OF THIS ORDER BY PLAINTIFF

XIV.

IT IS FURTHER ORDERED that copies of this Order may be served by facsimile transmission, personal or overnight delivery, or U.S. Mail, by agents and employees of the Commission or any state or federal law enforcement agency, on (1) any Defendant in this action, or (2) any other person or entity that may be subject to any provision of this Order. Service upon any branch or office of any entity shall effect service upon the entire entity.

RIGHT TO INVESTIGATE AND ADD ADDITIONAL PARTIES AND CLAIMS

XV.

Nothing in this Order shall be construed as limiting or restricting the Commission's right or ability to investigate, take discovery from, add to this action, or bring further actions against any persons or entities not specifically named herein as a Defendant who may be in active concert or participation with any of the Defendants.

RETENTION OF JURISDICTION

XVI.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

It is SO ORDERED.

DATE

June 23, 2004


DISTRICT JUDGE

Attachments A-C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CAPPSEALS, INC.,)
)
Plaintiff,)
)
v.)
)
DIRECT MARKETING CONCEPTS, INC.,)
ITV DIRECT, INC., DIRECT)
FULFILLMENT, LLC, DONALD)
BARRETT, and ROBERT MAIHOS,)
)
Defendants.)

C.A. No. 05-11907-JLT

**AFFIDAVIT OF SCOTT SILVERMAN IN SUPPORT OF CAPPSEALS INC.'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

EXHIBIT I

**ITV Direct Business Transactions
5/2005-7/2005**

Month	# of Transactions
May 2005	593
June 2005	306
July 2005	294

Accrual Basis

ITV Direct General Ledger As of September 30, 2005

Type	Date	Num	Name	Split	Debit	Credit	Balance
Check	4/29/2005	7415	WM/G	-SPLIT-		8,627.50	-890,913.60
Check	4/29/2005	7416	WM/RN-TV	-SPLIT-		106.25	-891,019.85
Check	4/29/2005	7417	WM/NS	-SPLIT-		127.50	-891,147.35
Check	4/29/2005	7418	WM/LV-TV	-SPLIT-		2,465.00	-893,612.35
Check	4/29/2005	7419	WM/MCN	-SPLIT-		2,805.00	-896,417.35
Check	4/29/2005	7420	Fairway Media	-SPLIT-		595.00	-897,012.35
Check	4/29/2005	7421	WM/FM	-SPLIT-		382.50	-897,394.85
Check	4/29/2005	7422	WM/LV	-SPLIT-		935.00	-898,329.85
Check	4/29/2005	7423	WM/YO	-SPLIT-		1,296.25	-899,626.10
Check	4/29/2005	7424	WM/FL	-SPLIT-		340.00	-899,966.10
Check	4/29/2005	7425	WM/PLG	-SPLIT-		1,317.50	-901,283.60
Check	4/29/2005	7426	WM/TA	-SPLIT-		42.50	-901,326.10
Check	4/29/2005	7427	WM/WR	-SPLIT-		935.00	-902,261.10
Check	4/29/2005	7428	WM/BW	-SPLIT-		1,253.75	-903,514.85
Check	4/29/2005	7430	WM/SMH	-SPLIT-		1,020.00	-904,534.85
Check	4/29/2005	7431	Fairway Media	-SPLIT-		1,530.00	-906,064.85
Check	4/29/2005	7432	WT/GS	-SPLIT-		1,615.00	-907,679.85
Check	4/29/2005	7433	WM/TH	-SPLIT-		552.50	-908,232.35
Check	4/29/2005	7434	Fairway Media	-SPLIT-	0.00	127.50	-908,359.85
Check	4/29/2005	7435	Fairway Media	-SPLIT-		4,420.00	-912,779.85
Check	4/29/2005	7436	WM/TOL	-SPLIT-		2,635.00	-915,414.85
Check	4/29/2005	7437	WM/TA	-SPLIT-		255.00	-915,669.85
Check	4/29/2005	7438	Fairway Media	-SPLIT-		2,040.00	-917,709.85
Check	4/29/2005	7439	WM/TG	-SPLIT-		2,252.50	-919,962.35
Check	4/29/2005	7440	WM/VK	-SPLIT-		1,466.25	-921,428.60
Check	4/29/2005	7441	WM/HF	-SPLIT-		1,487.50	-922,916.10
Check	4/29/2005	7442	Fairway Media	-SPLIT-		510.00	-923,426.10
Check	4/29/2005	7443	Fairway Media	-SPLIT-		318.75	-923,744.85
Check	4/29/2005	7444	WM/TV	-SPLIT-		1,530.00	-925,274.85
Check	4/29/2005	7445	WM/NY	-SPLIT-		1,020.00	-926,294.85
Check	4/29/2005	7446	WM/MOR	-SPLIT-		5,100.00	-931,394.85
Check	4/29/2005	7447	WM/PN	-SPLIT-		3,697.50	-935,092.35
Check	4/29/2005	7448	PAX	-SPLIT-		66,966.00	-1,002,058.35
Deposit	5/2/2005		Direct Marketing Concepts, ...	Due to Direct Marketing Concept	150,000.00		-852,058.35
Deposit	5/4/2005		Direct Marketing Concepts, ...	Due to Direct Marketing Concept	175,000.00		-677,058.35
Deposit	5/4/2005		Direct Marketing Concepts, ...	Due to Direct Marketing Concept	150,000.00		-527,058.35
Check	5/4/2005	7449	KCOP	-SPLIT-		1,232.50	-528,290.85
Check	5/4/2005	7450	Response TV Network Inc.	-SPLIT-		319.00	-528,609.85
Check	5/6/2005	7567	ACTN	-SPLIT-		8,287.52	-536,897.37
Check	5/6/2005	7568	AUCT	-SPLIT-		1,402.50	-538,299.87
Check	5/6/2005	7569	BFAS	-SPLIT-		531.25	-538,831.12
Check	5/6/2005	7570	CCMA	-SPLIT-		2,465.00	-541,296.12

ITV00326

Accrual Basis

ITV Direct
General Ledger
 As of September 30, 2005

Type	Date	Num	Name	Split	Debit	Credit	Balance
Check	5/6/2005	7571	CCNE	-SPLIT-		2,125.00	-543,421.12
Check	5/6/2005	7572	CCOX	-SPLIT-		510.00	-543,931.12
Check	5/6/2005	7573	CORT	-SPLIT-		20,655.00	-564,586.12
Check	5/6/2005	7574	CSPA	-SPLIT-		680.00	-565,266.12
Check	5/6/2005	7575	CTLG	-SPLIT-		935.00	-566,201.12
Check	5/6/2005	7576	DISC	-SPLIT-		31,705.00	-597,906.12
Check	5/6/2005	7577	FSAZ	-SPLIT-		913.75	-598,819.87
Check	5/6/2005	7578	FSFL	-SPLIT-		956.25	-599,776.12
Check	5/6/2005	7579	FSFO	-SPLIT-		5,100.00	-604,876.12
Check	5/6/2005	7580	FSNE	-SPLIT-		4,250.00	-609,126.12
Check	5/6/2005	7581	FSNM	-SPLIT-		5,695.00	-614,821.12
Check	5/6/2005	7582	FSNO	-SPLIT-		1,232.50	-616,053.62
Check	5/6/2005	7583	FSNP	-SPLIT-		1,360.00	-617,413.62
Check	5/6/2005	7584	FSW2	-SPLIT-		5,482.50	-622,896.12
Check	5/6/2005	7585	FSWE	-SPLIT-		6,502.50	-629,398.62
Check	5/6/2005	7586	GOOD	-SPLIT-		1,572.50	-630,971.12
Check	5/6/2005	7587	HGTV	-SPLIT-		6,545.00	-637,516.12
Check	5/6/2005	7588	HLCC	-SPLIT-		2,358.75	-639,874.87
Check	5/6/2005	7589	INSP	-SPLIT-		8,075.00	-647,949.87
Check	5/6/2005	7590	KADY	-SPLIT-		595.00	-648,544.87
Check	5/6/2005	7591	KASY	-SPLIT-		595.00	-649,139.87
Check	5/6/2005	7592	Fairway Media	-SPLIT-		3,570.00	-652,709.87
Check	5/6/2005	7593	KBHK	-SPLIT-		1,190.00	-653,899.87
Check	5/6/2005	7594	KCOP	-SPLIT-		1,147.50	-655,047.37
Check	5/6/2005	7595	KDFI	-SPLIT-		2,125.00	-657,172.37
Check	5/6/2005	7596	KDVR	-SPLIT-		510.00	-657,682.37
Check	5/6/2005	7597	Fairway Media	-SPLIT-		850.00	-658,532.37
Check	5/6/2005	7598	KEVN	-SPLIT-		191.25	-658,723.62
Check	5/6/2005	7599	Fairway Media	-SPLIT-		1,423.75	-660,147.37
Check	5/6/2005	7600	KGMC	-SPLIT-		616.25	-660,763.62
Check	5/6/2005	7601	KHLZ	-SPLIT-		170.00	-660,933.62
Check	5/6/2005	7602	KHON	-SPLIT-		599.45	-661,533.07
Check	5/6/2005	7603	KIMA	-SPLIT-		255.00	-661,788.07
Check	5/6/2005	7604	KJRH	-SPLIT-		170.00	-661,958.07
Check	5/6/2005	7605	KJTV	-SPLIT-		106.25	-662,064.32
Check	5/6/2005	7606	KLAV	-SPLIT-		501.50	-662,565.82
Check	5/6/2005	7607	Fairway Media	-SPLIT-		148.75	-662,714.57
Check	5/6/2005	7608	KMTV	-SPLIT-		2,061.25	-664,775.82
Check	5/6/2005	7609	KMNW	-SPLIT-		170.00	-664,945.82
Check	5/6/2005	7610	KNIN	-SPLIT-		1,041.25	-665,987.07
Check	5/6/2005	7611	Fairway Media	-SPLIT-		382.50	-666,369.57
Check	5/6/2005	7612	KOBB	-SPLIT-		1,530.00	-667,899.57
Check	5/6/2005	7613	Fairway Media	-SPLIT-		616.25	-668,515.82

ITV00327

Accrual Basis

ITV Direct General Ledger As of September 30, 2005

Type	Date	Num	Name	Split	Debit	Credit	Balance
Check	5/6/2005	7468	KOIN	-SPLT-		892.50	-669,408.32
Check	5/6/2005	7469	KPNZ	-SPLT-		1,487.50	-670,895.82
Check	5/6/2005	7470	KPRC	-SPLT-		765.00	-671,660.82
Check	5/6/2005	7471	Fairway Media	-SPLT-		191.25	-671,852.07
Check	5/6/2005	7472	Fairway Media	-SPLT-		212.50	-672,064.57
Check	5/6/2005	7473	Fairway Media	-SPLT-		63.75	-672,128.32
Check	5/6/2005	7474	KRON-TV	-SPLT-		4,590.00	-676,718.32
Check	5/6/2005	7475	KRRT	-SPLT-		297.50	-677,015.82
Check	5/6/2005	7476	KSAS	-SPLT-		127.50	-677,143.32
Check	5/6/2005	7477	Fairway Media	-SPLT-		935.00	-678,078.32
Check	5/6/2005	7478	KSOC	-SPLT-		233.75	-678,312.07
Check	5/6/2005	7479	KSEE	-SPLT-		1,530.00	-679,842.07
Check	5/6/2005	7480	KSHV	-SPLT-		255.00	-680,097.07
Check	5/6/2005	7481	KTBU	-SPLT-		3,612.50	-683,709.57
Check	5/6/2005	7482	Fairway Media	-SPLT-		2,210.00	-685,919.57
Check	5/6/2005	7483	Fairway Media	-SPLT-		276.25	-686,195.82
Check	5/6/2005	7484	KTVA (WB)	-SPLT-		4,760.00	-690,955.82
Check	5/6/2005	7485	KTSM	-SPLT-		765.00	-691,720.82
Check	5/6/2005	7486	KTTV	-SPLT-		3,060.00	-694,780.82
Check	5/6/2005	7487	KTVN	-SPLT-		106.25	-694,887.07
Check	5/6/2005	7488	KTWO	-SPLT-			-694,887.07
Check	5/6/2005	7489	KUSI	-SPLT-		3,187.50	-698,074.57
Check	5/6/2005	7490	KUTP	-SPLT-		1,083.75	-699,158.32
Check	5/6/2005	7491	KUMB	-SPLT-		1,742.50	-700,900.82
Check	5/6/2005	7492	Fairway Media	-SPLT-		637.50	-701,538.32
Check	5/6/2005	7493	Fairway Media	-SPLT-		106.25	-701,644.57
Check	5/6/2005	7494	KXLY	-SPLT-		3,400.00	-705,044.57
Check	5/6/2005	7495	KZTV	-SPLT-		1,062.50	-706,107.07
Check	5/6/2005	7496	MALL	-SPLT-		510.00	-706,617.07
Check	5/6/2005	7497	OXYG	-SPLT-		2,635.00	-709,252.07
Check	5/6/2005	7498	PCNC	-SPLT-		318.75	-709,570.82
Check	5/6/2005	7499	PRIN	-SPLT-		15,632.35	-725,203.17
Check	5/6/2005	7500	SPKE	-SPLT-		14,777.25	-739,980.42
Check	5/6/2005	7501	STUF	-SPLT-		212.50	-740,192.92
Check	5/6/2005	7502	SUNS	-SPLT-		6,460.00	-746,652.92
Check	5/6/2005	7503	TRAV	-SPLT-		16,320.00	-762,972.92
Check	5/6/2005	7504	TILC	-SPLT-		21,675.00	-784,647.92
Check	5/6/2005	7505	TTMC	-SPLT-		403.75	-785,051.67
Check	5/6/2005	7506	TVSS	-SPLT-		4,500.16	-789,551.83
Check	5/6/2005	7507	W100	-SPLT-		2,550.00	-792,101.83
Check	5/6/2005	7508	Fairway Media	-SPLT-		114.75	-792,216.58
Check	5/6/2005	7509	WBDT	-SPLT-		2,720.00	-794,936.58
Check	5/6/2005	7510	WBFS-Miami	-SPLT-		1,530.00	-796,466.58

0.00

Accrual Basis

ITV Direct General Ledger As of September 30, 2005

Type	Date	Num	Name	Split	Debit	Credit	Balance
Check	5/6/2005	7511	Fairway Media	-SPLT-		1,700.00	-798,166.58
Check	5/6/2005	7512	WBLW	-SPLT-		807.50	-798,974.08
Check	5/6/2005	7513	WCUL-Fairway	-SPLT-		892.50	-799,866.58
Check	5/6/2005	7514	WCOV	-SPLT-		276.25	-800,142.83
Check	5/6/2005	7515	WDCA	-SPLT-		2,465.00	-802,607.83
Check	5/6/2005	7516	WDIV	-SPLT-		595.00	-803,202.83
Check	5/6/2005	7517	WENT	-SPLT-		977.50	-804,180.33
Check	5/6/2005	7518	WENT	-SPLT-		13,302.50	-817,482.83
Check	5/6/2005	7519	WFLX	-SPLT-		1,147.50	-818,630.33
Check	5/6/2005	7520	WFOX	-SPLT-		807.50	-819,437.83
Check	5/6/2005	7521	WFTX	-SPLT-		2,847.50	-822,285.33
Check	5/6/2005	7522	Zephyr Media	-SPLT-		7,500.00	-829,785.33
Check	5/6/2005	7523	WMNK	-SPLT-		595.00	-830,380.33
Check	5/6/2005	7524	WMWB	-SPLT-		276.25	-830,656.58
Check	5/6/2005	7525	WIZE	-SPLT-		8,000.16	-838,656.74
Check	5/6/2005	7526	Fairway Media	-SPLT-		531.25	-839,187.99
Check	5/6/2005	7527	WKBT	-SPLT-		63.75	-839,251.74
Check	5/6/2005	7528	WKEF	-SPLT-		488.75	-839,740.49
Check	5/6/2005	7529	WKMG	-SPLT-		3,400.00	-843,140.49
Check	5/6/2005	7530	WLNS	-SPLT-		255.00	-843,395.49
Check	5/6/2005	7531	WLNY-TV	-SPLT-		7,225.00	-850,620.49
Check	5/6/2005	7532	Fairway Media	-SPLT-		595.00	-851,215.49
Check	5/6/2005	7533	WNFM	-SPLT-		382.50	-851,597.99
Check	5/6/2005	7534	WNLV	-SPLT-		1,870.00	-853,467.99
Check	5/6/2005	7535	WNYO	-SPLT-		595.00	-854,062.99
Check	5/6/2005	7536	WPLG	-SPLT-		1,742.50	-855,805.49
Check	5/6/2005	7537	WPWR	-SPLT-		1,020.00	-856,825.49
Check	5/6/2005	7538	WRBW	-SPLT-		1,572.50	-858,397.99
Check	5/6/2005	7539	Fairway Media	-SPLT-		297.50	-858,695.49
Check	5/6/2005	7540	WFSM	-SPLT-		1,530.00	-860,225.49
Check	5/6/2005	7541	Fairway Media	-SPLT-		1,615.00	-861,840.49
Check	5/6/2005	7542	WTGS	-SPLT-		552.50	-862,392.99
Check	5/6/2005	7543	WTHI	-SPLT-		1,062.50	-863,455.49
Check	5/6/2005	7544	WTOL	-SPLT-		5,270.00	-868,725.49
Check	5/6/2005	7545	WTTA	-SPLT-		255.00	-868,980.49
Check	5/6/2005	7546	Fairway Media	-SPLT-		1,020.00	-870,000.49
Check	5/6/2005	7547	WTTG	-SPLT-		1,870.00	-871,870.49
Check	5/6/2005	7548	WTVK	-SPLT-		765.00	-872,635.49
Check	5/6/2005	7549	WTVF	-SPLT-		425.00	-873,060.49
Check	5/6/2005	7550	WUHF	-SPLT-		1,402.50	-874,462.99
Check	5/6/2005	7551	Fairway Media	-SPLT-		255.00	-874,717.99
Check	5/6/2005	7552	Fairway Media	-SPLT-		420.75	-875,138.74
Check	5/6/2005	7553	WUTV	-SPLT-		1,105.00	-876,243.74

ITV00329

Accrual Basis

ITV Direct
General Ledger
 As of September 30, 2005

Type	Date	Num	Name	Split	Debit	Credit	Balance
Check	5/6/2005	7554	WMOR	-SPLT-		1,742.50	-877,986.24
Check	5/6/2005	7555	XUPN	-SPLT-		1,423.75	-879,409.99
Check	5/6/2005	7556	PAX	-SPLT-		68,386.75	-947,796.74
Deposit	5/10/2005		Direct Marketing Concepts, ...	Due to Direct Marketing Concept	125,000.00		-822,796.74
Deposit	5/12/2005		Direct Marketing Concepts, ...	Due to Direct Marketing Concept	125,000.00		-697,796.74
Check	5/12/2005	7587	Chief Media, LLC	-SPLT-		6,321.00	-704,117.74
Check	5/12/2005	7588	Chief Media, LLC	-SPLT-		983.00	-705,100.74
Check	5/12/2005	7589	Broadcast Response, Inc.	-SPLT-		34,363.50	-739,464.24
Check	5/13/2005	7590	Direct Marketing Concepts, ...	-SPLT-		1,000.00	-740,464.24
Check	5/13/2005	7591	ACTN	-SPLT-	Media Purchases	8,287.52	-748,751.76
Check	5/13/2005	7592	AUCT	-SPLT-		1,402.50	-750,154.26
Check	5/13/2005	7593	BFAS	-SPLT-		531.25	-750,685.51
Check	5/13/2005	7594	CCMA	-SPLT-		2,252.50	-752,938.01
Check	5/13/2005	7595	CCNE	-SPLT-		3,825.00	-756,763.01
Check	5/13/2005	7596	CORT	-SPLT-		19,524.50	-776,287.51
Check	5/13/2005	7597	CTLG	-SPLT-		1,190.00	-777,477.51
Check	5/13/2005	7598	DISC	-SPLT-		26,520.00	-803,997.51
Check	5/13/2005	7599	FTTV	-SPLT-		170.00	-804,167.51
Check	5/13/2005	7600	GOOD	-SPLT-		1,572.50	-805,740.01
Check	5/13/2005	7601	HLCC	-SPLT-		1,402.50	-807,142.51
Check	5/13/2005	7602	ISHO	-SPLT-		212.50	-807,355.01
Check	5/13/2005	7603	KAQY	-SPLT-		595.00	-807,950.01
Check	5/13/2005	7604	Fairway Media	-SPLT-		1,020.00	-808,970.01
Check	5/13/2005	7605	Fairway Media	-SPLT-			-808,970.01
Check	5/13/2005	7606	KASY	-SPLT-		935.00	-809,905.01
Check	5/13/2005	7607	Fairway Media	-SPLT-		3,973.75	-813,878.76
Check	5/13/2005	7608	KBHK	-SPLT-		595.00	-814,473.76
Check	5/13/2005	7609	KBTX	-SPLT-		191.25	-814,665.01
Check	5/13/2005	7610	KBBB	-SPLT-		42.50	-814,707.51
Check	5/13/2005	7611	KCOP	-SPLT-		935.00	-815,642.51
Check	5/13/2005	7612	KDFI	-SPLT-		340.00	-815,982.51
Check	5/13/2005	7613	KDFX	-SPLT-		42.50	-816,025.01
Check	5/13/2005	7614	KDOC TV	-SPLT-		1,700.00	-817,725.01
Check	5/13/2005	7615	Fairway Media	-SPLT-		425.00	-818,150.01
Check	5/13/2005	7616	KEVN	-SPLT-		1,700.00	-819,850.01
Check	5/13/2005	7617	Fairway Media	-SPLT-		191.25	-820,041.26
Check	5/13/2005	7618	KGMC	-SPLT-		1,700.00	-821,741.26
Check	5/13/2005	7619	Fairway Media	-SPLT-			-821,741.26
Check	5/13/2005	7620	KHIZ	-SPLT-		1,700.00	-823,441.26
Check	5/13/2005	7621	KIMO	-SPLT-		170.00	-823,611.26
Check	5/13/2005	7622	KKFX	-SPLT-		425.00	-824,036.26
Check	5/13/2005	7623	KLAV	-SPLT-		212.50	-824,248.76
Check	5/13/2005	7624		-SPLT-		501.50	-824,750.26

ITV00330

Accrual Basis

ITV Direct

General Ledger

As of September 30, 2005

Type	Date	Numb	Name	Split	Debit	Credit	Balance
Check	5/13/2005	7626	KLFX-TV	-SPLIT-		595.00	-825,345.26
Check	5/13/2005	7626	Fairway Media	-SPLIT-		148.75	-825,494.01
Check	5/13/2005	7627	KMSS	-SPLIT-		85.00	-825,579.01
Check	5/13/2005	7628	KMTV	-SPLIT-		2,061.25	-827,640.26
Check	5/13/2005	7629	KMNJ	-SPLIT-		85.00	-827,725.26
Check	5/13/2005	7630	KNIN	-SPLIT-		658.75	-828,384.01
Check	5/13/2005	7631	KNND	-SPLIT-		807.50	-829,191.51
Check	5/13/2005	7632	Fairway Media	-SPLIT-		297.50	-829,489.01
Check	5/13/2005	7633	KOB	-SPLIT-		255.00	-829,744.01
Check	5/13/2005	7634	Fairway Media	-SPLIT-		616.25	-830,360.26
Check	5/13/2005	7635	KOIN	-SPLIT-		297.50	-830,657.76
Check	5/13/2005	7636	KOLN	-SPLIT-		106.25	-830,764.01
Check	5/13/2005	7637	Fairway Media	-SPLIT-		616.25	-831,380.26
Check	5/13/2005	7638	KPNZ	-SPLIT-		1,062.50	-832,442.76
Check	5/13/2005	7639	KPRC	-SPLIT-		2,295.00	-834,737.76
Check	5/13/2005	7640	Fairway Media	-SPLIT-		191.25	-834,929.01
Check	5/13/2005	7642	Fairway Media	-SPLIT-		212.50	-835,141.51
Check	5/13/2005	7643	Fairway Media	-SPLIT-		208.25	-835,349.76
Check	5/13/2005	7644	Fairway Media	-SPLIT-		765.00	-836,114.76
Check	5/13/2005	7645	KRON-TV	-SPLIT-		212.50	-836,327.26
Check	5/13/2005	7646	KRON-TV	-SPLIT-		4,590.00	-840,917.26
Check	5/13/2005	7647	KRAS	-SPLIT-		148.75	-841,066.01
Check	5/13/2005	7648	Fairway Media	-SPLIT-		255.00	-841,321.01
Check	5/13/2005	7649	Fairway Media	-SPLIT-		2,975.00	-844,296.01
Check	5/13/2005	7650	KSEE	-SPLIT-		233.75	-845,529.76
Check	5/13/2005	7651	KSHV	-SPLIT-		765.00	-845,294.76
Check	5/13/2005	7652	KSTU	-SPLIT-		255.00	-845,549.76
Check	5/13/2005	7653	KTB	-SPLIT-		297.50	-845,847.26
Check	5/13/2005	7654	Fairway Media	-SPLIT-		2,953.75	-848,801.01
Check	5/13/2005	7655	KTLA (WB)	-SPLIT-		276.25	-849,077.26
Check	5/13/2005	7656	KTSM	-SPLIT-		5,440.00	-854,517.26
Check	5/13/2005	7657	KTTV	-SPLIT-		1,190.00	-855,707.26
Check	5/13/2005	7658	Fairway Media	-SPLIT-		85.00	-855,792.26
Check	5/13/2005	7659	KTVZ	-SPLIT-		170.00	-855,962.26
Check	5/13/2005	7660	KTVZ	-SPLIT-		127.50	-856,089.76
Check	5/13/2005	7661	KUSI	-SPLIT-		1,615.00	-857,704.76
Check	5/13/2005	7662	KUTP	-SPLIT-		1,466.25	-859,171.01
Check	5/13/2005	7663	KUWB	-SPLIT-		743.75	-859,914.76
Check	5/13/2005	7664	Fairway Media	-SPLIT-		212.50	-860,127.26
Check	5/13/2005	7665	Fairway Media	-SPLIT-		106.25	-860,233.51
Check	5/13/2005	7666	KXGN	-SPLIT-		170.00	-860,403.51
Check	5/13/2005	7667	KXLY	-SPLIT-		3,400.00	-863,803.51

0.00

ITV00331

Accrual Basis

ITV Direct General Ledger As of September 30, 2005

Type	Date	Num	Name	Split	Debit	Credit	Balance
Check	5/13/2005	7668	Fairway Media	-SPLIT-		148.75	-863,952.26
Check	5/13/2005	7669	KZTV	-SPLIT-		807.50	-864,759.76
Check	5/13/2005	7670	MALL	-SPLIT-		510.00	-865,269.76
Check	5/13/2005		NECN	-SPLIT-	0.00		-865,269.76
Check	5/13/2005	7671	PPIN	-SPLIT-		15,632.35	-880,902.11
Check	5/13/2005	7672	SPKE	-SPLIT-		9,367.00	-890,269.11
Check	5/13/2005	7673	STUF	-SPLIT-		467.50	-890,736.61
Check	5/13/2005	7674	STYL	-SPLIT-		616.25	-891,352.86
Check	5/13/2005	7675	TTMC	-SPLIT-		403.75	-891,756.61
Check	5/13/2005	7676	TVSS	-SPLIT-		4,500.16	-896,256.77
Check	5/13/2005	7677	UP14	-SPLIT-		127.50	-896,384.27
Check	5/13/2005	7678	W100	-SPLIT-		2,550.00	-898,934.27
Check	5/13/2005	7679	WACH	-SPLIT-		361.25	-899,295.52
Check	5/13/2005	7680	WACY	-SPLIT-		297.50	-899,593.02
Check	5/13/2005	7681	Fairway Media	-SPLIT-		680.00	-900,273.02
Check	5/13/2005	7682	Fairway Media	-SPLIT-		114.75	-900,387.77
Check	5/13/2005	7683	WBAY	-SPLIT-		127.50	-900,515.27
Check	5/13/2005	7684	WBDT	-SPLIT-		2,061.25	-902,576.52
Check	5/13/2005	7685	WBFS-Miami	-SPLIT-		510.00	-903,086.52
Check	5/13/2005	7686	WBTV	-SPLIT-		340.00	-903,426.52
Check	5/13/2005	7687	WCOV	-SPLIT-		276.25	-903,702.77
Check	5/13/2005	7688	WDCA	-SPLIT-		2,805.00	-906,507.77
Check	5/13/2005	7689	WDIV	-SPLIT-		595.00	-907,102.77
Check	5/13/2005	7690	Fairway Media	-SPLIT-		714.00	-907,816.77
Check	5/13/2005	7691	WENT	-SPLIT-		531.25	-908,348.02
Check	5/13/2005	7692	WENT	-SPLIT-		19,741.25	-928,089.27
Check	5/13/2005	7693	WF1D	-SPLIT-	0.00		-928,089.27
Check	5/13/2005	7694	WFLX	-SPLIT-		2,295.00	-930,384.27
Check	5/13/2005	7695	WFOX	-SPLIT-		1,062.50	-931,446.77
Check	5/13/2005	7696	WFTX	-SPLIT-		3,315.00	-934,761.77
Check	5/13/2005	7697	Zephyr Media	-SPLIT-		3,000.00	-937,761.77
Check	5/13/2005	7698	WMNK	-SPLIT-		595.00	-938,356.77
Check	5/13/2005	7699	WIZE	-SPLIT-		8,000.16	-946,356.93
Check	5/13/2005	7700	Fairway Media	-SPLIT-		573.75	-946,930.68
Check	5/13/2005	7701	Fairway Media	-SPLIT-		531.25	-947,461.93
Check	5/13/2005	7702	WKBT	-SPLIT-		127.50	-947,589.43
Check	5/13/2005	7703	WKEF	-SPLIT-		488.75	-948,078.18
Check	5/13/2005	7704	WKMG	-SPLIT-		5,950.00	-954,028.18
Check	5/13/2005	7705	WLNS	-SPLIT-		106.25	-954,134.43
Check	5/13/2005	7706	WLNY-TV	-SPLIT-		2,890.00	-957,024.43
Check	5/13/2005	7707	Fairway Media	-SPLIT-		595.00	-957,619.43
Check	5/13/2005	7708	WNFM	-SPLIT-		382.50	-958,001.93
Check	5/13/2005	7709	WNLV	-SPLIT-		935.00	-958,936.93

ITV00332

Accrual Basis

ITV Direct

General Ledger

As of September 30, 2005

Type	Date	Num	Name	Split	Debit	Credit	Balance
Check	5/13/2005	7710	WMYO	-SPLT-		701.25	-959,638.18
Check	5/13/2005	7711	WMYV	-SPLT-		4,080.00	-963,718.18
Check	5/13/2005	7712	WOFL	-SPLT-		2,061.25	-965,779.43
Check	5/13/2005	7713	WPLG	-SPLT-		1,615.00	-967,394.43
Check	5/13/2005	7714	WPWR	-SPLT-		2,252.50	-969,646.93
Check	5/13/2005	7715	WRBW	-SPLT-		2,125.00	-971,771.93
Check	5/13/2005	7716	Fairway Media	-SPLT-		2,040.00	-973,811.93
Check	5/13/2005	7717	WSMH	-SPLT-		1,530.00	-975,341.93
Check	5/13/2005	7718	Fairway Media	-SPLT-		1,615.00	-976,956.93
Check	5/13/2005	7719	Fairway Media	-SPLT-		3,570.00	-980,526.93
Check	5/13/2005	7720	WTGS	-SPLT-		552.50	-981,079.43
Check	5/13/2005	7721	WTHI	-SPLT-		127.50	-981,206.93
Check	5/13/2005	7722	Fairway Media	-SPLT-		446.25	-981,653.18
Check	5/13/2005	7723	WTTA	-SPLT-		255.00	-981,908.18
Check	5/13/2005	7724	WTTG	-SPLT-		1,317.50	-983,225.68
Check	5/13/2005	7725	WTVK	-SPLT-		1,402.50	-984,628.18
Check	5/13/2005	7726	WUHF	-SPLT-		1,487.50	-986,115.68
Check	5/13/2005	7727	Fairway Media	-SPLT-		352.75	-986,468.43
Check	5/13/2005	7728	WUTV	-SPLT-		1,530.00	-987,998.43
Check	5/13/2005	7729	WMNY	-SPLT-		1,020.00	-989,018.43
Check	5/13/2005	7730	WMOR	-SPLT-	0.00	17,935.00	-1,006,953.43
Check	5/13/2005	7731	XMOR	-SPLT-		2,273.75	-1,009,227.18
Check	5/13/2005	7732	XLPN	-SPLT-		150.00	-1,009,377.18
Check	5/13/2005	7733	Response TV Network Inc.	-SPLT-		101,753.50	-1,111,130.68
Check	5/13/2005	7734	PAX	-SPLT-		733.52	-1,111,864.20
Check	5/13/2005	7734	KGMB	-SPLT-			-936,864.20
Deposit	5/16/2005		Direct Marketing Concepts, ...	Due to Direct Marketing Concept	175,000.00		-861,864.20
Deposit	5/17/2005		Direct Marketing Concepts, ...	Due to Direct Marketing Concept	75,000.00		-711,864.20
Deposit	5/18/2005		Direct Marketing Concepts, ...	Due to Direct Marketing Concept	150,000.00		-722,464.04
Check	5/19/2005	7868	WIZE	-SPLT-		10,599.84	-724,079.04
Check	5/19/2005	7868	WTEN-TV	-SPLT-		1,615.00	-724,079.04
Check	5/20/2005	7735	Direct Marketing Concepts, ...	Due to Direct Marketing Concept	160,000.00		-572,366.54
Check	5/20/2005	7736	ACTN	-SPLT-		8,287.50	-573,556.54
Check	5/20/2005	7737	AUCT	-SPLT-		1,190.00	-574,087.79
Check	5/20/2005	7738	BFAS	-SPLT-		531.25	-580,337.79
Check	5/20/2005	7739	BRAV-Zephyr	-SPLT-		6,250.00	-582,802.79
Check	5/20/2005	7740	CCMA	-SPLT-		2,465.00	-584,927.79
Check	5/20/2005	7741	CCNE	-SPLT-		2,125.00	-597,507.79
Check	5/20/2005	7742	CORT	-SPLT-		12,580.00	-598,697.79
Check	5/20/2005	7743	CTLG	-SPLT-		1,190.00	-645,022.79
Check	5/20/2005	7744	DISC	-SPLT-		46,325.00	-645,235.29
Check	5/20/2005	7745	FTTV	-SPLT-		212.50	-650,101.54
Check	5/20/2005	7745	FSAZ	-SPLT-		4,866.25	

ITV00333

Accrual Basis

ITV Direct

General Ledger

As of September 30, 2005

Type	Date	Num	Name	Split	Debit	Credit	Balance
Check	5/20/2005	7746	FSCO	-SPLT-		5,533.50	-655,635.04
Check	5/20/2005	7747	FSDT	-SPLT-		3,952.50	-659,587.54
Check	5/20/2005	7748	FSFL	-SPLT-		9,350.00	-668,937.54
Check	5/20/2005	7749	FSRM	-SPLT-		1,211.25	-670,148.79
Check	5/20/2005	7750	FSSW	-SPLT-		12,367.50	-682,516.29
Check	5/20/2005	7751	FSSW	-SPLT-		4,717.50	-687,233.79
Check	5/20/2005	7752	FSME	-SPLT-		5,015.00	-692,248.79
Check	5/20/2005	7753	GOOD	-SPLT-		1,275.00	-693,523.79
Check	5/20/2005	7754	HLCC	-SPLT-		1,402.50	-694,926.29
Check	5/20/2005	7755	ISHO	-SPLT-		212.50	-695,138.79
Check	5/20/2005	7756	KAQY	-SPLT-		297.50	-695,436.29
Check	5/20/2005	7757	Fairway Media	-SPLT-		1,020.00	-696,456.29
Check	5/20/2005	7758	KASY	-SPLT-		1,020.00	-697,476.29
Check	5/20/2005	7759	Fairway Media	-SPLT-		3,973.75	-701,450.04
Check	5/20/2005	7760	KBHK	-SPLT-		467.50	-701,917.54
Check	5/20/2005	7761	KBTX	-SPLT-		191.25	-702,108.79
Check	5/20/2005	7762	KCLO	-SPLT-		127.50	-702,236.29
Check	5/20/2005	7763	KCOP	-SPLT-		807.50	-703,043.79
Check	5/20/2005	7765	Fairway Media	-SPLT-		1,275.00	-704,318.79
Check	5/20/2005	7766	KEVN	-SPLT-		191.25	-704,510.04
Check	5/20/2005	7767	Fairway Media	-SPLT-		1,423.75	-705,933.79
Check	5/20/2005	7768	KGMB	-SPLT-		2,213.52	-708,147.31
Check	5/20/2005	7769	KHIZ	-SPLT-		170.00	-708,317.31
Check	5/20/2005	7770	KHON	-SPLT-		783.90	-709,101.21
Check	5/20/2005	7771	KLAV	-SPLT-		501.50	-709,602.71
Check	5/20/2005	7772	KLFY-TV	-SPLT-		595.00	-710,197.71
Check	5/20/2005	7773	Fairway Media	-SPLT-		148.75	-710,346.46
Check	5/20/2005	7774	KMTV	-SPLT-		3,761.25	-714,107.71
Check	5/20/2005	7775	KMUV	-SPLT-		340.00	-714,447.71
Check	5/20/2005	7776	KNIN	-SPLT-		743.75	-715,191.46
Check	5/20/2005	7777	KOB	-SPLT-		85.00	-715,276.46
Check	5/20/2005	7778	Fairway Media	-SPLT-		616.25	-715,892.71
Check	5/20/2005	7779	KOIN	-SPLT-		1,572.50	-717,465.21
Check	5/20/2005	7780	KOLD	-SPLT-		255.00	-717,720.21
Check	5/20/2005	7781	KOLN	-SPLT-		850.00	-718,570.21
Check	5/20/2005	7782	Fairway Media	-SPLT-		616.25	-719,186.46
Check	5/20/2005	7783	KPNZ	-SPLT-		1,317.50	-720,503.96
Check	5/20/2005	7784	KPRC	-SPLT-		765.00	-721,268.96
Check	5/20/2005	7785	Fairway Media	-SPLT-		144.50	-721,413.46
Check	5/20/2005	7786	Fairway Media	-SPLT-		212.50	-721,625.96
Check	5/20/2005	7787	Fairway Media	-SPLT-		208.25	-721,834.21
Check	5/20/2005	7788	KRON-TV	-SPLT-		4,590.00	-726,424.21
Check	5/20/2005	7788	KRRT	-SPLT-		0.00	-726,424.21

ITV00334

Accrual Basis

ITV Direct
General Ledger
 As of September 30, 2005

Type	Date	Num	Name	Split	Debit	Credit	Balance
Check	5/20/2005	7789	Fairway Media	-SPLT-		531.25	-726,955.46
Check	5/20/2005	7790	Fairway Media	-SPLT-		467.50	-727,422.96
Check	5/20/2005	7791	KSOC	-SPLT-		233.75	-727,656.71
Check	5/20/2005	7792	KSHV	-SPLT-	0.00		-727,656.71
Check	5/20/2005	7793	KTBU	-SPLT-		3,166.25	-730,822.96
Check	5/20/2005	7794	Fairway Media	-SPLT-		2,210.00	-733,032.96
Check	5/20/2005	7795	Fairway Media	-SPLT-		276.25	-733,309.21
Check	5/20/2005	7796	KTLLA (WB)	-SPLT-		4,080.00	-737,389.21
Check	5/20/2005	7797	Fairway Media	-SPLT-		3,145.00	-740,534.21
Check	5/20/2005	7798	KTTV	-SPLT-		1,190.00	-741,724.21
Check	5/20/2005	7799	Fairway Media	-SPLT-		3,655.00	-745,379.21
Check	5/20/2005	7800	Fairway Media	-SPLT-		340.00	-745,719.21
Check	5/20/2005	7801	KTUVN	-SPLT-		531.25	-746,250.46
Check	5/20/2005	7802	KTVZ	-SPLT-	0.00		-746,250.46
Check	5/20/2005	7803	KUSI	-SPLT-		1,062.50	-747,312.96
Check	5/20/2005	7804	KUTP	-SPLT-		1,275.00	-748,587.96
Check	5/20/2005	7805	KUMB	-SPLT-		1,742.50	-750,330.46
Check	5/20/2005	7806	Fairway Media	-SPLT-		765.00	-751,095.46
Check	5/20/2005	7807	Fairway Media	-SPLT-		106.25	-751,201.71
Check	5/20/2005	7808	KXGN	-SPLT-	0.00		-751,201.71
Check	5/20/2005	7809	KXLY	-SPLT-		3,400.00	-754,601.71
Check	5/20/2005	7810	Fairway Media	-SPLT-		148.75	-754,750.46
Check	5/20/2005	7811	KZTV	-SPLT-		1,062.50	-755,812.96
Check	5/20/2005	7812	MALL	-SPLT-		255.00	-756,067.96
Check	5/20/2005	7813	NECN	-SPLT-		2,953.75	-759,021.71
Check	5/20/2005	7814	OVTN	-SPLT-		306.00	-759,327.71
Check	5/20/2005	7815	PCNC	-SPLT-		1,572.50	-760,900.21
Check	5/20/2005	7816	PPN	-SPLT-		15,632.35	-776,532.56
Check	5/20/2005	7817	STUF	-SPLT-		467.50	-777,000.06
Check	5/20/2005	7839	STYL	-SPLT-		616.25	-777,616.31
Check	5/20/2005	7840	SUNS	-SPLT-		8,202.50	-785,818.81
Check	5/20/2005	7841	TRAV	-SPLT-		4,590.00	-790,408.81
Check	5/20/2005	7842	TILC	-SPLT-		10,200.00	-800,608.81
Check	5/20/2005	7843	TTMC	-SPLT-		403.75	-801,012.56
Check	5/20/2005	7844	TVSS	-SPLT-		8,500.00	-809,512.56
Check	5/20/2005	7845	W100	-SPLT-		2,550.00	-812,062.56
Check	5/20/2005	7846	WACH	-SPLT-		361.25	-812,423.81
Check	5/20/2005	7847	WACY	-SPLT-		297.50	-812,721.31
Check	5/20/2005	7848	Fairway Media	-SPLT-		114.75	-812,836.06
Check	5/20/2005	7849	WBAY	-SPLT-		807.50	-813,643.56
Check	5/20/2005	7850	WBDT	-SPLT-		722.50	-814,366.06
Check	5/20/2005	7851	WBFF	-SPLT-		722.50	-815,088.56
Check	5/20/2005	7852	WBFS-Miami	-SPLT-		510.00	-815,598.56

ITV00335

Accrual Basis

ITV Direct

General Ledger

As of September 30, 2005

Type	Date	Num	Name	Split	Debit	Credit	Balance
Check	5/20/2005	7853	Fairway Media	-SPLIT-		340.00	-815,938.56
Check	5/20/2005	7854	WBLI	-SPLIT-		2,800.00	-818,738.56
Check	5/20/2005	7855	WBLW	-SPLIT-		340.00	-819,078.56
Check	5/20/2005	7856	WCOV	-SPLIT-		276.25	-819,354.81
Check	5/20/2005	7857	WQV	-SPLIT-		11,645.00	-830,999.81
Check	5/20/2005	7858	Fairway Media	-SPLIT-		714.00	-831,713.81
Check	5/20/2005	7859	WEAL	-SPLIT-		340.00	-832,053.81
Check	5/20/2005	7860	Fairway Media	-SPLIT-		892.50	-832,946.31
Check	5/20/2005	7861	WENT	-SPLIT-	0.00		-832,946.31
Check	5/20/2005	7862	WENT	-SPLIT-		13,515.00	-846,461.31
Check	5/20/2005	7863	WFOX	-SPLIT-		403.75	-846,865.06
Check	5/20/2005	7864	WFTX	-SPLIT-		2,847.50	-849,712.56
Check	5/20/2005	7865	Tower Media	-SPLIT-		3,300.00	-853,012.56
Check	5/20/2005	7866	Fairway Media	-SPLIT-		318.75	-853,331.31
Check	5/20/2005	7867	WINK	-SPLIT-		595.00	-853,926.31
Check	5/20/2005	7869	Fairway Media	-SPLIT-		531.25	-854,457.56
Check	5/20/2005	7870	WKBT	-SPLIT-		722.50	-855,180.06
Check	5/20/2005	7871	WKCF	-SPLIT-		191.25	-855,371.31
Check	5/20/2005	7872	WKMG	-SPLIT-		6,587.50	-861,958.81
Check	5/20/2005	7873	WLNS	-SPLIT-		1,593.75	-863,552.56
Check	5/20/2005	7874	WLNY-TV	-SPLIT-		4,420.00	-867,972.56
Check	5/20/2005	7875	Fairway Media	-SPLIT-		701.25	-868,673.81
Check	5/20/2005	7876	WAFM	-SPLIT-		382.50	-869,056.31
Check	5/20/2005	7877	WNYO	-SPLIT-	0.00		-869,056.31
Check	5/20/2005	7878	WNYW	-SPLIT-		3,867.50	-872,923.81
Check	5/20/2005	7879	WOFL	-SPLIT-		2,167.50	-875,091.31
Check	5/20/2005	7880	WPLG	-SPLIT-		1,955.00	-877,046.31
Check	5/20/2005	7881	WRBW	-SPLIT-		2,635.00	-879,681.31
Check	5/20/2005	7882	WSDM	-SPLIT-		255.00	-879,936.31
Check	5/20/2005	7883	WSMH	-SPLIT-	0.00		-879,936.31
Check	5/20/2005	7884	Fairway Media	-SPLIT-		1,615.00	-881,551.31
Check	5/20/2005	7885	Fairway Media	-SPLIT-	0.00		-881,551.31
Check	5/20/2005	7887	WTGS	-SPLIT-		467.50	-882,018.81
Check	5/20/2005	7888	WTHI	-SPLIT-		1,062.50	-883,081.31
Check	5/20/2005	7889	Fairway Media	-SPLIT-		722.50	-883,803.81
Check	5/20/2005	7890	Fairway Media	-SPLIT-		892.50	-884,696.31
Check	5/20/2005	7891	WTOL	-SPLIT-		2,210.00	-886,906.31
Check	5/20/2005	7892	WTTA	-SPLIT-		255.00	-887,161.31
Check	5/20/2005	7893	WTTG	-SPLIT-		680.00	-887,841.31
Check	5/20/2005	7894	WTVK	-SPLIT-		765.00	-888,606.31
Check	5/20/2005	7895	WTWC	-SPLIT-		318.75	-888,925.06
Check	5/20/2005	7896	WTVF	-SPLIT-		212.50	-889,137.56
Check	5/20/2005	7897	WLHF	-SPLIT-		2,592.50	-891,730.06

ITV00336

Accrual Basis

ITV Direct

General Ledger

As of September 30, 2005

Type	Date	Num	Name	Split	Debit	Credit	Balance
Check	5/20/2005	7898	Fairway Media	-SPLIT-		255.00	-891,985.06
Check	5/20/2005	7899	Fairway Media	-SPLIT-		352.75	-892,337.81
Check	5/20/2005	7900	WLTV	-SPLIT-		1,105.00	-893,442.81
Check	5/20/2005	7901	WMNY	-SPLIT-		680.00	-894,122.81
Check	5/20/2005	7902	WMOR	-SPLIT-		13,430.00	-907,552.81
Check	5/20/2005	7903	XUPN	-SPLIT-		1,423.75	-908,976.56
Check	5/20/2005	7904	Response TV Network Inc.	-SPLIT-		48.00	-909,024.56
Check	5/20/2005	7905	PAX	-SPLIT-		51,838.75	-960,863.31
Deposit	5/23/2005		Media Purchases		7,757.62		-953,105.69
Deposit	5/24/2005		Direct Marketing Concepts, ...	Due to Direct Marketing Concept	180,000.00		-773,105.69
Deposit	5/25/2005		Direct Marketing Concepts, ...	Due to Direct Marketing Concept	200,000.00		-573,105.69
Deposit	5/27/2005		Direct Marketing Concepts, ...	Due to Direct Marketing Concept	75,000.00		-498,105.69
Check	5/27/2005	7908	WDCA	-SPLIT-		680.00	-498,785.69
Check	5/27/2005	7909	ACTN	-SPLIT-		8,287.52	-507,073.21
Check	5/27/2005	7910	AUCT	-SPLIT-		1,402.50	-508,475.71
Check	5/27/2005	7911	BFAS	-SPLIT-		531.25	-509,006.96
Check	5/27/2005	7912	CCMA	-SPLIT-		2,465.00	-511,471.96
Check	5/27/2005	7913	CCNE	-SPLIT-		3,825.00	-515,296.96
Check	5/27/2005	7914	CORT	-SPLIT-		14,705.00	-530,001.96
Check	5/27/2005	7915	CTLG	-SPLIT-		1,190.00	-531,191.96
Check	5/27/2005	7916	DISC	-SPLIT-		48,875.00	-580,066.96
Check	5/27/2005	7917	FTV	-SPLIT-		2,082.50	-582,149.46
Check	5/27/2005	7918	FOXN	-SPLIT-		3,060.00	-585,209.46
Check	5/27/2005	7919	FSAZ	-SPLIT-		2,847.50	-588,056.96
Check	5/27/2005	7920	FSCO	-SPLIT-		2,868.75	-590,925.71
Check	5/27/2005	7921	FSDT	-SPLIT-		1,976.25	-592,901.96
Check	5/27/2005	7922	FSFL	-SPLIT-		4,675.00	-597,576.96
Check	5/27/2005	7923	FSNE	-SPLIT-		5,865.00	-603,441.96
Check	5/27/2005	7924	FSNM	-SPLIT-		7,395.00	-610,836.96
Check	5/27/2005	7925	FSSO	-SPLIT-		3,060.00	-613,896.96
Check	5/27/2005	7926	FSSW	-SPLIT-		7,055.00	-620,951.96
Check	5/27/2005	7927	FSW2	-SPLIT-		2,465.00	-623,416.96
Check	5/27/2005	7928	FSWE	-SPLIT-		3,145.00	-626,561.96
Check	5/27/2005	7929	GOOD	-SPLIT-		212.50	-626,774.46
Check	5/27/2005	7930	HLCC	-SPLIT-		1,402.50	-628,176.96
Check	5/27/2005	7931	ISHO	-SPLIT-		212.50	-628,389.46
Check	5/27/2005	7932	KADY	-SPLIT-		595.00	-628,984.46
Check	5/27/2005	7933	KASY	-SPLIT-		595.00	-629,579.46
Check	5/27/2005	7934	Fairway Media	-SPLIT-		4,483.75	-634,063.21
Check	5/27/2005	7935	KBHK	-SPLIT-		467.50	-634,530.71
Check	5/27/2005	7936	KBTX	-SPLIT-		191.25	-634,721.96
Check	5/27/2005	7937	KBWB	-SPLIT-		255.00	-634,976.96
Check	5/27/2005	7938	KCLO	-SPLIT-		63.75	-635,040.71

ITV00337

Accrual Basis

**ITV Direct
General Ledger
As of September 30, 2005**

Type	Date	Num	Name	Split	Debit	Credit	Balance
Check	5/27/2005	7939	KDFI	-SPLIT-		1,678.75	-636,719.46
Check	5/27/2005	7940	KDPX	-SPLIT-		191.25	-636,910.71
Check	5/27/2005	7941	KDSM	-SPLIT-		743.75	-637,654.46
Check	5/27/2005	7942	KDVR	-SPLIT-		170.00	-637,824.46
Check	5/27/2005	7943	Fairway Media	-SPLIT-		1,275.00	-639,099.46
Check	5/27/2005	7944	KEVN	-SPLIT-		191.25	-639,290.71
Check	5/27/2005	7945	Fairway Media	-SPLIT-		1,423.75	-640,714.46
Check	5/27/2005	7946	KGMB	-SPLIT-		2,213.52	-642,927.98
Check	5/27/2005	7947	Fairway Media	-SPLIT-		4,590.00	-647,517.98
Check	5/27/2005	7948	KHLZ	-SPLIT-		170.00	-647,687.98
Check	5/27/2005	7949	KHON	-SPLIT-		599.45	-648,287.43
Check	5/27/2005	7950	KITV	-SPLIT-		929.67	-649,217.10
Check	5/27/2005	7951	KJRH	-SPLIT-		1,317.50	-650,534.60
Check	5/27/2005	7952	KJTV	-SPLIT-		212.50	-650,747.10
Check	5/27/2005	7953	KLFY-TV	-SPLIT-		1,190.00	-651,937.10
Check	5/27/2005	7954	Fairway Media	-SPLIT-		148.75	-652,085.85
Check	5/27/2005	7955	KLTU	-SPLIT-		1,360.00	-653,445.85
Check	5/27/2005	7956	KMTV	-SPLIT-		2,061.25	-655,507.10
Check	5/27/2005	7957	KMNJ	-SPLIT-		743.75	-656,250.85
Check	5/27/2005	7958	KNN	-SPLIT-		233.75	-656,484.60
Check	5/27/2005	7959	Fairway Media	-SPLIT-		2,805.00	-659,289.60
Check	5/27/2005	7960	Fairway Media	-SPLIT-		233.75	-659,523.35
Check	5/27/2005	7961	KOIN	-SPLIT-		637.50	-660,160.85
Check	5/27/2005	7962	KOLN	-SPLIT-		913.75	-661,074.60
Check	5/27/2005	7963	Fairway Media	-SPLIT-		616.25	-661,690.85
Check	5/27/2005	7964	KPNZ	-SPLIT-		170.00	-661,860.85
Check	5/27/2005	7965	KPRC	-SPLIT-		765.00	-662,625.85
Check	5/27/2005	7966	Fairway Media	-SPLIT-		212.50	-662,838.35
Check	5/27/2005	7967	Fairway Media	-SPLIT-		208.25	-663,046.60
Check	5/27/2005	7968	KRON-TV	-SPLIT-		4,590.00	-667,636.60
Check	5/27/2005	7969	Fairway Media	-SPLIT-		106.25	-667,742.85
Check	5/27/2005	7970	KSAS	-SPLIT-		127.50	-667,870.35
Check	5/27/2005	7971	Fairway Media	-SPLIT-		467.50	-668,337.85
Check	5/27/2005	7972	KSOC	-SPLIT-		233.75	-668,571.60
Check	5/27/2005	7973	KTBU	-SPLIT-		3,463.75	-672,035.35
Check	5/27/2005	7974	Fairway Media	-SPLIT-		276.25	-672,311.60
Check	5/27/2005	7975	KTLA (WB)	-SPLIT-		4,760.00	-677,071.60
Check	5/27/2005	7976	Fairway Media	-SPLIT-		2,805.00	-679,876.60
Check	5/27/2005	7977	Fairway Media	-SPLIT-		340.00	-680,216.60
Check	5/27/2005	7978	KTUN	-SPLIT-		106.25	-680,322.85
Check	5/27/2005	7979	KUWB	-SPLIT-		446.25	-680,769.10
Check	5/27/2005	7980	Fairway Media	-SPLIT-		765.00	-681,534.10
Check	5/27/2005	7981	Fairway Media	-SPLIT-		106.25	-681,640.35

ITV00338

Accrual Basis

ITV Direct

General Ledger

As of September 30, 2005

Type	Date	Num	Name	Split	Debit	Credit	Balance
Check	5/27/2005	7982	KXLY	-SPLT-		3,400.00	-685,040.35
Check	5/27/2005	7983	Fairway Media	-SPLT-		148.75	-685,189.10
Check	5/27/2005	7984	KZTV	-SPLT-		1,317.50	-686,506.60
Check	5/27/2005	7985	NESN	-SPLT-		3,145.00	-689,651.60
Check	5/27/2005	7986	OVTV	-SPLT-		174.25	-689,825.85
Check	5/27/2005	7987	OXYG	-SPLT-		20,315.00	-710,140.85
Check	5/27/2005	7988	PCNC	-SPLT-		1,338.75	-711,479.60
Check	5/27/2005	7989	PPIN	-SPLT-		26,963.70	-738,443.30
Check	5/27/2005	7990	STUF	-SPLT-		467.50	-738,910.80
Check	5/27/2005	7991	STYL	-SPLT-		1,296.25	-740,207.05
Check	5/27/2005	7992	SUNS	-SPLT-		4,101.25	-744,308.30
Check	5/27/2005	7993	TRAV	-SPLT-		23,800.00	-768,108.30
Check	5/27/2005	7994	TTLG	-SPLT-		5,100.00	-773,208.30
Check	5/27/2005	7995	TTMC	-SPLT-		403.75	-773,612.05
Check	5/27/2005	7996	TVSS	-SPLT-		8,500.00	-782,112.05
Check	5/27/2005	7997	UP14	-SPLT-		127.50	-782,239.55
Check	5/27/2005	7998	W100	-SPLT-		2,550.00	-784,789.55
Check	5/27/2005	7999	WACH	-SPLT-		361.25	-785,150.80
Check	5/27/2005	8000	WACY	-SPLT-		297.50	-785,448.30
Check	5/27/2005	8001	Fairway Media	-SPLT-		114.75	-785,563.05
Check	5/27/2005	8002	WBAY	-SPLT-		255.00	-785,818.05
Check	5/27/2005	8003	WBDT	-SPLT-		722.50	-786,540.55
Check	5/27/2005	8004	WBFF	-SPLT-		1,275.00	-787,815.55
Check	5/27/2005	8005	WBFS-Miami	-SPLT-		510.00	-788,325.55
Check	5/27/2005	8006	Fairway Media	-SPLT-		1,020.00	-789,345.55
Check	5/27/2005	8007	WBLW	-SPLT-		340.00	-789,685.55
Check	5/27/2005	8008	WCOV	-SPLT-		276.25	-789,961.80
Check	5/27/2005	8009	WDCA	-SPLT-		977.50	-790,939.30
Check	5/27/2005	8010	Fairway Media	-SPLT-		595.00	-791,534.30
Check	5/27/2005	8011	WENT	-SPLT-		11,538.75	-803,073.05
Check	5/27/2005	8012	WFLX	-SPLT-	0.00		-803,073.05
Check	5/27/2005	8013	WFOG	-SPLT-		722.50	-803,795.55
Check	5/27/2005	8014	WFTX	-SPLT-		3,272.50	-807,068.05
Check	5/27/2005	8015	WNK	-SPLT-		595.00	-807,663.05
Check	5/27/2005	8016	WMMB	-SPLT-	0.00		-807,663.05
Check	5/27/2005	8017	WJZE	-SPLT-		18,600.00	-826,263.05
Check	5/27/2005	8018	Fairway Media	-SPLT-		531.25	-826,794.30
Check	5/27/2005	8019	WKBT	-SPLT-		446.25	-827,240.55
Check	5/27/2005	8020	WMMG	-SPLT-		2,975.00	-830,215.55
Check	5/27/2005	8021	WLNS	-SPLT-		956.25	-831,171.80
Check	5/27/2005	8022	WMLN-TV	-SPLT-		2,890.00	-834,061.80
Check	5/27/2005	8023	Fairway Media	-SPLT-		786.25	-834,848.05
Check	5/27/2005	8024	WMMI	-SPLT-		382.50	-835,230.55

ITV00339

Accrual Basis

ITV Direct General Ledger As of September 30, 2005

Type	Date	Num	Name	Split	Debit	Credit	Balance
Check	5/27/2005	8025	WNYW	-SPLIT-		5,695.00	-840,925.55
Check	5/27/2005	8026	WPVG	-SPLIT-		1,615.00	-842,540.55
Check	5/27/2005	8027	WPVR	-SPLIT-		1,296.25	-843,836.80
Check	5/27/2005	8028	WREB	-SPLIT-		1,742.50	-845,579.30
Check	5/27/2005	8029	WSDM	-SPLIT-		170.00	-845,749.30
Check	5/27/2005	8030	Fairway Media	-SPLIT-		1,615.00	-847,364.30
Check	5/27/2005	8031	Fairway Media	-SPLIT-		1,785.00	-849,149.30
Check	5/27/2005	8032	WTGS	-SPLIT-		552.50	-849,701.80
Check	5/27/2005	8033	WTHI	-SPLIT-		765.00	-850,466.80
Check	5/27/2005	8034	Fairway Media	-SPLIT-		595.00	-851,061.80
Check	5/27/2005	8035	WTOL	-SPLIT-		2,635.00	-853,696.80
Check	5/27/2005	8036	WTTA	-SPLIT-		255.00	-853,951.80
Check	5/27/2005	8037	Fairway Media	-SPLIT-		1,020.00	-854,971.80
Check	5/27/2005	8038	Fairway Media	-SPLIT-		552.50	-855,524.30
Check	5/27/2005	8039	WTVK	-SPLIT-		1,466.25	-856,990.55
Check	5/27/2005	8040	WTVWC	-SPLIT-		85.00	-857,075.55
Check	5/27/2005	8041	WUHF	-SPLIT-		1,487.50	-858,563.05
Check	5/27/2005	8042	Fairway Media	-SPLIT-		255.00	-858,818.05
Check	5/27/2005	8043	Fairway Media	-SPLIT-		352.75	-859,170.80
Check	5/27/2005	8044	WUTV	-SPLIT-		1,105.00	-860,275.80
Check	5/27/2005	8045	WMNY	-SPLIT-		1,020.00	-861,295.80
Check	5/27/2005	8046	WMOR	-SPLIT-		8,670.00	-869,965.80
Check	5/27/2005	8047	XUPN	-SPLIT-		2,273.75	-872,239.55
Check	5/27/2005	8048	PAX	-SPLIT-		59,402.25	-931,641.80
Check	5/27/2005	8049	PAX	-SPLIT-		44,286.00	-975,926.80
Deposit	6/1/2005		Direct Marketing Concepts, ...		100,000.00		-875,926.80
Check	6/2/2005	8050	CORT	-SPLIT-		21,590.00	-897,516.80
Check	6/2/2005	8051	Zephyr Media	-SPLIT-		4,500.00	-902,016.80
Check	6/2/2005	8052	FSRM	-SPLIT-		3,400.00	-905,416.80
Check	6/2/2005	8053	KDFI	-SPLIT-		425.00	-905,841.80
Deposit	6/3/2005		Direct Marketing Concepts, ...		60,000.00		-845,841.80
Check	6/3/2005		Lifetime		20,400.00		-825,441.80
Check	6/3/2005	8054	ACTN	-SPLIT-		20.00	-825,461.80
Check	6/3/2005	8055	AUCT	-SPLIT-		16,575.04	-842,036.84
Check	6/3/2005	8056	BFAS	-SPLIT-		1,402.50	-843,439.34
Check	6/3/2005	8057	CCMA	-SPLIT-		531.25	-843,970.59
Check	6/3/2005	8058	CCNE	-SPLIT-		2,465.00	-846,435.59
Check	6/3/2005	8060	CTLG	-SPLIT-		2,125.00	-848,560.59
Check	6/3/2005	8061	DISC	-SPLIT-		1,190.00	-849,750.59
Check	6/3/2005	8062	FTV	-SPLIT-		25,925.00	-875,675.59
Check	6/3/2005	8063	FOXN	-SPLIT-		382.50	-876,058.09
Check	6/3/2005	8064	FSAZ	-SPLIT-		1,530.00	-877,588.09
Check	6/3/2005			-SPLIT-		2,698.75	-880,286.84

ITV00340

Accrual Basis

ITV Direct General Ledger As of September 30, 2005

Type	Date	Num	Name	Split	Debit	Credit	Balance
Check	6/3/2005	8065	FSCO	-SPLT-		2,868.75	-883,155.59
Check	6/3/2005	8066	FSDT	-SPLT-		1,976.25	-885,131.84
Check	6/3/2005	8067	FSFL	-SPLT-		4,845.00	-889,976.84
Check	6/3/2005	8068	FSNE	-SPLT-		3,400.00	-893,376.84
Check	6/3/2005	8069	FSNM	-SPLT-		2,465.00	-895,841.84
Check	6/3/2005	8070	FSSO	-SPLT-		1,020.00	-896,861.84
Check	6/3/2005	8071	FSSW	-SPLT-		5,673.75	-902,535.59
Check	6/3/2005	8072	FSW2	-SPLT-		2,252.50	-904,788.09
Check	6/3/2005	8073	FSWE	-SPLT-		1,870.00	-906,658.09
Check	6/3/2005	8074	GOOD	-SPLT-		1,147.50	-907,805.59
Check	6/3/2005	8075	HLOC	-SPLT-		1,402.50	-909,208.09
Check	6/3/2005	8076	ISHO	-SPLT-		212.50	-909,420.59
Check	6/3/2005	8077	KAQY	-SPLT-		595.00	-910,015.59
Check	6/3/2005	8078	KASY	-SPLT-		1,020.00	-911,035.59
Check	6/3/2005	8079	KBHK	-SPLT-		467.50	-911,503.09
Check	6/3/2005	8080	KCOP	-SPLT-		807.50	-912,310.59
Check	6/3/2005	8081	KDFI	-SPLT-		340.00	-912,650.59
Check	6/3/2005	8082	KDFX	-SPLT-		616.25	-913,266.84
Check	6/3/2005	8083	KDSM	-SPLT-		297.50	-913,564.34
Check	6/3/2005	8084	KDVR	-SPLT-		340.00	-913,904.34
Check	6/3/2005	8085	KEVN	-SPLT-		191.25	-914,095.59
Check	6/3/2005	8086	KGMB	-SPLT-		2,213.52	-916,309.11
Check	6/3/2005	8087	KHLZ	-SPLT-		170.00	-916,479.11
Check	6/3/2005	8088	KHON	-SPLT-		599.45	-917,078.56
Check	6/3/2005	8089	KITV	-SPLT-		619.78	-917,698.34
Check	6/3/2005	8090	KJRH	-SPLT-		807.50	-918,505.84
Check	6/3/2005	8091	KJTV	-SPLT-		1,062.50	-919,568.34
Check	6/3/2005	8092	KLFY-TV	-SPLT-		595.00	-920,163.34
Check	6/3/2005	8093	KMTV	-SPLT-		2,061.25	-922,224.59
Check	6/3/2005	8094	KMVU	-SPLT-		212.50	-922,437.09
Check	6/3/2005	8095	KNIN	-SPLT-		1,615.00	-924,052.09
Check	6/3/2005	8096	KOBB	-SPLT-		255.00	-924,307.09
Check	6/3/2005	8097	KOLN	-SPLT-		882.50	-925,199.59
Check	6/3/2005	8098	KOLN	-SPLT-		850.00	-926,049.59
Check	6/3/2005	8099	KPNZ	-SPLT-		595.00	-926,644.59
Check	6/3/2005	8100	KPRC	-SPLT-		765.00	-927,409.59
Check	6/3/2005	8101	KRV	-SPLT-		212.50	-927,622.09
Check	6/3/2005	8102	KRON-TV	-SPLT-		4,590.00	-932,212.09
Check	6/3/2005	8103	KSAS	-SPLT-		63.75	-932,275.84
Check	6/3/2005	8104	KSCC	-SPLT-		233.75	-932,509.59
Check	6/3/2005	8105	KTBU	-SPLT-		3,591.25	-936,100.84
Check	6/3/2005	8106	KTLA (WB)	-SPLT-		5,440.00	-941,540.84
Check	6/3/2005	8107	KTTV	-SPLT-		1,912.50	-943,453.34

ITV00341

Accrual Basis

**ITV Direct
General Ledger
As of September 30, 2005**

Type	Date	Num	Name	Split	Debit	Credit	Balance
Check	6/3/2005	8108	KTVN	-SPLIT-		1,126.25	-944,579.59
Check	6/3/2005	8109	KUSI	-SPLIT-		765.00	-945,344.59
Check	6/3/2005	8110	KUTP	-SPLIT-		1,466.25	-946,810.84
Check	6/3/2005	8111	KUMB	-SPLIT-		573.75	-947,384.59
Check	6/3/2005	8112	KXLY	-SPLIT-		2,210.00	-949,594.59
Check	6/3/2005	8113	KZTV	-SPLIT-		1,062.50	-950,657.09
Check	6/3/2005	8114	NESN	-SPLIT-		1,445.00	-952,102.09
Check	6/3/2005	8115	OVTN	-SPLIT-		216.75	-952,318.84
Check	6/3/2005	8116	OXYG	-SPLIT-		8,840.00	-961,158.84
Check	6/3/2005	8117	PCNC	-SPLIT-		871.25	-962,030.09
Check	6/3/2005	8118	PPN	-SPLIT-		31,264.70	-993,294.79
Check	6/3/2005	8119	STUF	-SPLIT-		467.50	-993,762.29
Check	6/3/2005	8120	STYL	-SPLIT-		616.25	-994,378.54
Check	6/3/2005	8121	SUNS	-SPLIT-		4,101.25	-998,479.79
Check	6/3/2005	8122	TLLC	-SPLIT-		5,100.00	-1,003,579.79
Check	6/3/2005	8123	TTMC	-SPLIT-		403.75	-1,003,983.54
Check	6/3/2005	8124	WM00	-SPLIT-		2,550.00	-1,006,533.54
Check	6/3/2005	8125	WACH	-SPLIT-		361.25	-1,006,894.79
Check	6/3/2005	8126	WACY	-SPLIT-		297.50	-1,007,192.29
Check	6/3/2005	8127	WBAY	-SPLIT-		127.50	-1,007,319.79
Check	6/3/2005	8128	WBDT	-SPLIT-		3,102.50	-1,010,422.29
Check	6/3/2005	8129	WBFF	-SPLIT-		1,275.00	-1,011,697.29
Check	6/3/2005	8130	WBFS-Miami	-SPLIT-		510.00	-1,012,207.29
Check	6/3/2005	8131	WBTV	-SPLIT-		935.00	-1,013,142.29
Check	6/3/2005	8133	WENT	-SPLIT-		18,870.00	-1,032,012.29
Check	6/3/2005	8134	WFOX	-SPLIT-		3,931.25	-1,035,943.54
Check	6/3/2005	8135	WFTX	-SPLIT-		3,272.50	-1,039,216.04
Check	6/3/2005	8136	Tower Media	-SPLIT-		3,500.00	-1,042,716.04
Check	6/3/2005	8137	WNK	-SPLIT-		595.00	-1,043,311.04
Check	6/3/2005	8138	WIZE	-SPLIT-		9,300.00	-1,052,611.04
Check	6/3/2005	8139	WKBT	-SPLIT-		743.75	-1,053,354.79
Check	6/3/2005	8140	WKEF	-SPLIT-		488.75	-1,053,843.54
Check	6/3/2005	8141	WKMG	-SPLIT-		3,400.00	-1,057,243.54
Check	6/3/2005	8142	WLNS	-SPLIT-		680.00	-1,057,923.54
Check	6/3/2005	8143	WLNY-TV	-SPLIT-		4,420.00	-1,062,343.54
Check	6/3/2005	8144	WNFM	-SPLIT-		488.75	-1,062,832.29
Check	6/3/2005	8145	WNYW	-SPLIT-		8,075.00	-1,070,907.29
Check	6/3/2005	8146	WOFL	-SPLIT-		106.25	-1,071,013.54
Check	6/3/2005	8147	WPLG	-SPLIT-		1,317.50	-1,072,331.04
Check	6/3/2005	8148	WPMR	-SPLIT-		1,275.00	-1,073,606.04
Check	6/3/2005	8149	WRBW	-SPLIT-		2,040.00	-1,075,646.04
Check	6/3/2005	8150	WSDM	-SPLIT-		255.00	-1,075,901.04
Check	6/3/2005	8151	WTGS	-SPLIT-		552.50	-1,076,453.54

ITV00342

Accrual Basis

ITV Direct General Ledger As of September 30, 2005

Type	Date	Num	Name	Split	Debit	Credit	Balance
Check	6/3/2005	8152	WTHI	-SPLIT-		1,062.50	-1,077,516.04
Check	6/3/2005	8153	WTOL	-SPLIT-		2,635.00	-1,080,151.04
Check	6/3/2005	8154	WTTA	-SPLIT-		255.00	-1,080,406.04
Check	6/3/2005	8155	WTTG	-SPLIT-		765.00	-1,081,171.04
Check	6/3/2005	8156	WTVK	-SPLIT-		1,466.25	-1,082,637.29
Check	6/3/2005	8157	WTVK	-SPLIT-		170.00	-1,082,807.29
Check	6/3/2005	8158	WTVF	-SPLIT-		1,020.00	-1,083,827.29
Check	6/3/2005	8159	WUHF	-SPLIT-		1,402.50	-1,085,229.79
Check	6/3/2005	8160	WUTB	-SPLIT-		361.25	-1,085,591.04
Check	6/3/2005	8161	WUTV	-SPLIT-		1,105.00	-1,086,696.04
Check	6/3/2005	8162	WMNY	-SPLIT-		680.00	-1,087,376.04
Check	6/3/2005	8163	WMOR	-SPLIT-		12,750.00	-1,100,126.04
Check	6/3/2005	8164	Fairway Media	-SPLIT-		36,167.50	-1,136,293.54
Deposit	6/6/2005		Direct Marketing Concepts, ...	Due to Direct Marketing Concept	200,000.00		-936,293.54
Deposit	6/6/2005		Direct Marketing Concepts, ...	Due to Direct Marketing Concept	150,000.00		-786,293.54
Deposit	6/7/2005		Media Purchases	Due to Direct Marketing Concept	42.50		-786,251.04
Deposit	6/8/2005		Direct Marketing Concepts, ...	Due to Direct Marketing Concept	100,000.00		-686,251.04
Check	6/9/2005	8217	PAX	-SPLIT-		72,254.25	-758,505.29
Deposit	6/9/2005		Direct Marketing Concepts, ...	Due to Direct Marketing Concept	100,000.00		-658,505.29
Check	6/9/2005	8216	PAX	-SPLIT-		81,227.50	-739,732.79
Deposit	6/10/2005		Direct Marketing Concepts, ...	Due to Direct Marketing Concept	150,000.00		-889,732.79
Check	6/10/2005	8166	AUCT	-SPLIT-		2,847.50	-892,580.29
Check	6/10/2005	8167	BFAS	-SPLIT-		595.00	-893,175.29
Check	6/10/2005	8168	CORT	-SPLIT-		32,555.00	-925,730.29
Check	6/10/2005	8169	CTLG	-SPLIT-		2,252.50	-927,982.79
Check	6/10/2005	8170	DISC	-SPLIT-		5,440.00	-933,422.79
Check	6/10/2005	8171	FSL	-SPLIT-		6,545.00	-939,967.79
Check	6/10/2005	8172	GOOD	-SPLIT-		2,677.50	-942,645.29
Check	6/10/2005	8173	HLC	-SPLIT-		2,380.00	-945,025.29
Check	6/10/2005	8174	KBHK	-SPLIT-		276.25	-945,301.54
Check	6/10/2005	8175	KDFX	-SPLIT-		510.00	-945,811.54
Check	6/10/2005	8176	KDVR	-SPLIT-		467.50	-946,279.04
Check	6/10/2005	8177	KEVN	-SPLIT-		63.75	-946,342.79
Check	6/10/2005	8178	KGBT	-SPLIT-		850.00	-947,192.79
Check	6/10/2005	8179	KGMC	-SPLIT-		786.25	-947,979.04
Check	6/10/2005	8180	KLTV	-SPLIT-		1,190.00	-949,169.04
Check	6/10/2005	8181	KNIN	-SPLIT-		637.50	-949,806.54
Check	6/10/2005	8182	KOB	-SPLIT-		510.00	-950,316.54
Check	6/10/2005	8183	KOIN	-SPLIT-		340.00	-950,656.54
Check	6/10/2005	8184	KPRC	-SPLIT-		6,205.00	-956,861.54
Check	6/10/2005	8185	KSAS	-SPLIT-		1,381.25	-958,242.79
Check	6/10/2005	8186	KSCC	-SPLIT-		191.25	-958,434.04
Check	6/10/2005	8187	KSTU	-SPLIT-		382.50	-958,816.54

ITV00343

Accrual Basis

ITV Direct

General Ledger

As of September 30, 2005

Type	Date	Num	Name	Split	Debit	Credit	Balance
Check	6/10/2005	8188	KTLA (WB)	-SPLIT-		4,526.25	-663,342.79
Check	6/10/2005	8189	KUSI	-SPLIT-		3,017.50	-666,360.29
Check	6/10/2005	8190	MALL	-SPLIT-		170.00	-666,530.29
Check	6/10/2005	8191	OXYG	-SPLIT-		3,825.00	-670,355.29
Check	6/10/2005	8192	STUF	-SPLIT-		850.00	-671,205.29
Check	6/10/2005	8193	SUNS	-SPLIT-		5,843.75	-677,049.04
Check	6/10/2005	8194	TTMC	-SPLIT-		573.75	-677,622.79
Check	6/10/2005	8195	WAKA	-SPLIT-		1,275.00	-678,897.79
Check	6/10/2005	8196	WBDT	-SPLIT-		850.00	-679,747.79
Check	6/10/2005	8197	WDCA	-SPLIT-		297.50	-680,045.29
Check	6/10/2005	8198	WENT	-SPLIT-		12,240.00	-692,285.29
Check	6/10/2005	8199	WFOX	-SPLIT-		1,381.25	-693,666.54
Check	6/10/2005	8200	WHBQ	-SPLIT-		212.50	-693,879.04
Check	6/10/2005	8201	WINK	-SPLIT-		1,190.00	-695,069.04
Check	6/10/2005	8202	WKMG	-SPLIT-		14,450.00	-709,519.04
Check	6/10/2005	8203	WLNY-TV	-SPLIT-		7,565.00	-717,084.04
Check	6/10/2005	8204	WMCN	-SPLIT-		2,443.75	-719,527.79
Check	6/10/2005	8205	WNYW	-SPLIT-		6,630.00	-726,157.79
Check	6/10/2005	8206	WPLG	-SPLIT-		3,655.00	-729,812.79
Check	6/10/2005	8207	WTOG	-SPLIT-		510.00	-730,322.79
Check	6/10/2005	8208	WTVK	-SPLIT-		340.00	-730,662.79
Check	6/10/2005	8209	WUHF	-SPLIT-		2,592.50	-733,255.29
Check	6/10/2005	8210	WUTB	-SPLIT-		361.25	-733,616.54
Check	6/10/2005	8211	WUTV	-SPLIT-		1,870.00	-735,486.54
Check	6/10/2005	8212	WVNY	-SPLIT-		680.00	-736,166.54
Check	6/10/2005	8213	WMOR	-SPLIT-		5,100.00	-741,266.54
Check	6/10/2005	8214	XUPN	-SPLIT-		3,187.50	-744,454.04
Check	6/10/2005	8215	Fairway Media	-SPLIT-		14,182.25	-758,636.29
Check	6/10/2005	8059	CORT		0.00		-758,636.29
Check	6/10/2005	8132	WDCA	Uncategorized Expenses		0.00	-758,636.29
Deposit	6/13/2005		Direct Marketing Concepts, ...	Uncategorized Expenses	135,000.00		-623,636.29
Deposit	6/15/2005		Direct Marketing Concepts, ...	Due to Direct Marketing Concept	150,000.00		-473,636.29
Check	6/15/2005	8218	CORT	Bank Service Charges		20.00	-473,656.29
Check	6/16/2005	8219	WDCA	-SPLIT-		31,705.00	-505,361.29
Check	6/16/2005		Bank Service Charges	-SPLIT-		4,441.25	-509,802.54
Check	6/16/2005		Bank Service Charges	-SPLIT-		20.00	-509,822.54
Check	6/16/2005		Bank Service Charges	-SPLIT-		20.00	-509,842.54
Deposit	6/17/2005	8220	Direct Marketing Concepts, ...	Due to Direct Marketing Concept	300,000.00		-209,842.54
Check	6/17/2005	8221	AUCT	-SPLIT-		1,423.75	-211,266.29
Check	6/17/2005	8222	BFAS	-SPLIT-		297.50	-211,563.79
Check	6/17/2005	8223	CORT	-SPLIT-		20,400.00	-231,963.79
Check	6/17/2005	8223	CTLG	-SPLIT-		1,232.50	-233,196.29
Check	6/17/2005	8224	FSAZ	-SPLIT-		3,463.75	-236,660.04

ITV00344

Accrual Basis

ITV Direct

General Ledger

As of September 30, 2005

Type	Date	Num	Name	Split	Debit	Credit	Balance
Check	6/17/2005	8225	FSCO	-SPLIT-		4,398.75	-241,058.79
Check	6/17/2005	8226	FSFL	-SPLIT-		3,485.00	-244,543.79
Check	6/17/2005	8227	FSNE	-SPLIT-		5,780.00	-250,323.79
Check	6/17/2005	8228	FSSO	-SPLIT-		5,270.00	-255,593.79
Check	6/17/2005	8229	FSSW	-SPLIT-		9,605.00	-265,198.79
Check	6/17/2005	8230	FSW2	-SPLIT-		6,715.00	-271,913.79
Check	6/17/2005	8231	FSWE	-SPLIT-		8,670.00	-280,583.79
Check	6/17/2005	8232	GOOD	-SPLIT-		1,572.50	-282,156.29
Check	6/17/2005	8233	HLCC	-SPLIT-		1,190.00	-283,346.29
Check	6/17/2005	8234	INSP	-SPLIT-		9,435.00	-292,781.29
Check	6/17/2005	8235	KASY	-SPLIT-		1,020.00	-293,801.29
Check	6/17/2005	8236	KBHK	-SPLIT-		318.75	-294,120.04
Check	6/17/2005	8237	KDFX	-SPLIT-		297.50	-294,417.54
Check	6/17/2005	8238	KDVR	-SPLIT-		382.50	-294,800.04
Check	6/17/2005	8239	KLFY-TV	-SPLIT-		2,210.00	-297,010.04
Check	6/17/2005	8240	KMVU	-SPLIT-		1,190.00	-298,200.04
Check	6/17/2005	8241	KNIN	-SPLIT-		510.00	-298,710.04
Check	6/17/2005	8242	KOB	-SPLIT-		255.00	-298,965.04
Check	6/17/2005	8243	KOLD	-SPLIT-		5,695.00	-304,660.04
Check	6/17/2005	8244	KOLN	-SPLIT-		318.75	-304,978.79
Check	6/17/2005	8245	KPNZ	-SPLIT-		1,912.50	-306,891.29
Check	6/17/2005	8246	KRON-TV	-SPLIT-		12,240.00	-319,131.29
Check	6/17/2005	8247	KSAS	-SPLIT-		1,317.50	-320,448.79
Check	6/17/2005	8248	KSCC	-SPLIT-		127.50	-320,576.29
Check	6/17/2005	8249	KSTU	-SPLIT-		127.50	-320,703.79
Check	6/17/2005	8250	KTLA (WB)	-SPLIT-		9,137.50	-329,841.29
Check	6/17/2005	8251	KTVN	-SPLIT-		3,017.50	-332,858.79
Check	6/17/2005	8252	KUSI	-SPLIT-		595.00	-333,453.79
Check	6/17/2005	8253	KUTP	-SPLIT-		2,932.50	-336,386.29
Check	6/17/2005	8254	KUMB	-SPLIT-		2,040.00	-338,426.29
Check	6/17/2005	8255	KUMB	-SPLIT-		1,147.50	-339,573.79
Check	6/17/2005	8256	KMBQ	-SPLIT-		2,167.50	-341,741.29
Check	6/17/2005	8257	KOLY	-SPLIT-		1,105.00	-342,846.29
Check	6/17/2005	8258	PCNC	-SPLIT-		2,040.00	-344,886.29
Check	6/17/2005	8259	PPIN	-SPLIT-		24,528.45	-369,414.74
Check	6/17/2005	8260	SUNS	-SPLIT-		4,398.75	-373,813.49
Check	6/17/2005	8261	TTMC	-SPLIT-		382.50	-374,195.99
Check	6/17/2005	8262	WACY	-SPLIT-		63.75	-374,259.74
Check	6/17/2005	8263	WAKA	-SPLIT-		765.00	-375,024.74
Check	6/17/2005	8264	WBDT	-SPLIT-		3,973.75	-378,998.49
Check	6/17/2005	8265	WBNS	-SPLIT-		2,380.00	-381,378.49
Check	6/17/2005	8266	WDAF	-SPLIT-		2,550.00	-383,928.49
Check	6/17/2005	8267	WDCA	-SPLIT-		255.00	-384,183.49

ITV00345

Accrual Basis

ITV Direct
General Ledger
 As of September 30, 2005

Type	Date	Num	Name	Split	Debit	Credit	Balance
Check	6/17/2005	8268	WENT	-SPLT-		6,991.25	-391,174.74
Check	6/17/2005	8269	WFOX	-SPLT-		531.25	-391,705.99
Check	6/17/2005	8270	WFTX	-SPLT-		5,610.00	-397,315.99
Check	6/17/2005	8271	WGXA	-SPLT-		1,785.00	-399,100.99
Check	6/17/2005	8272	WGHP	-SPLT-		2,231.25	-401,332.24
Check	6/17/2005	8273	WNNK	-SPLT-	0.00		-401,332.24
Check	6/17/2005	8274	WMTI	-SPLT-		1,827.50	-403,159.74
Check	6/17/2005	8275	WKBT	-SPLT-		1,551.25	-404,710.99
Check	6/17/2005	8276	WKMG	-SPLT-	0.00		-404,710.99
Check	6/17/2005	8277	WKRN-TV	-SPLT-		106.25	-404,817.24
Check	6/17/2005	8278	WLNS	-SPLT-		1,742.50	-406,559.74
Check	6/17/2005	8279	WLNY-TV	-SPLT-		4,760.00	-411,319.74
Check	6/17/2005	8280	WMCN	-SPLT-		786.25	-412,105.99
Check	6/17/2005	8281	WNNY	-SPLT-		765.00	-412,870.99
Check	6/17/2005	8282	WRIC	-SPLT-		1,126.25	-413,997.24
Check	6/17/2005	8283	WTOL	-SPLT-		510.00	-414,507.24
Check	6/17/2005	8284	WTVK	-SPLT-		1,020.00	-415,527.24
Check	6/17/2005	8285	WTVF	-SPLT-		1,870.00	-417,397.24
Check	6/17/2005	8286	WUHF	-SPLT-		595.00	-417,992.24
Check	6/17/2005	8287	WMMR	-SPLT-		25,925.00	-443,917.24
Check	6/17/2005	8288	XUPN	-SPLT-		2,082.50	-445,999.74
Check	6/17/2005	8289	Fairway Media	-SPLT-		20,166.25	-466,165.99
Check	6/17/2005	8290	PAX	-SPLT-		56,285.00	-522,450.99
Deposit	6/20/2005	8291	Direct Marketing Concepts, ...	-SPLT-	215,000.00		-307,450.99
Deposit	6/20/2005		FSRM	-SPLT-		1,360.00	-308,810.99
Deposit	6/23/2005		Direct Marketing Concepts, ...	-SPLT-	150,000.00		-158,810.99
Deposit	6/23/2005		Direct Marketing Concept	-SPLT-	160,000.00		1,189.01
Check	6/24/2005	8293	ACTN	-SPLT-		16,575.00	-15,385.99
Check	6/24/2005	8294	Zephyr Media	-SPLT-		29,000.00	-44,385.99
Check	6/24/2005	8295	CCMA	-SPLT-		1,989.00	-46,374.99
Check	6/24/2005	8296	CCNE	-SPLT-		6,077.50	-52,452.49
Check	6/24/2005	8297	CCOX	-SPLT-		1,181.50	-53,633.99
Check	6/24/2005	8298	CORT	-SPLT-		21,250.00	-74,883.99
Check	6/24/2005	8299	DISC	-SPLT-		49,300.00	-124,183.99
Check	6/24/2005	8300	FTTV	-SPLT-		1,317.50	-125,501.49
Check	6/24/2005	8301	FSDT	-SPLT-		4,760.00	-130,261.49
Check	6/24/2005	8302	FSNM	-SPLT-		2,826.25	-133,087.74
Check	6/24/2005	8303	FSRM	-SPLT-		1,785.00	-134,872.74
Check	6/24/2005	8304	KEVN	-SPLT-		765.00	-135,637.74
Check	6/24/2005	8305	KGMB	-SPLT-		5,976.51	-141,614.25
Check	6/24/2005	8306	KGMC	-SPLT-		297.50	-141,911.75
Check	6/24/2005	8307	KITV	-SPLT-		309.89	-142,221.64
Check	6/24/2005	8308	KLTV	-SPLT-		1,572.50	-143,794.14

ITV00346

Accrual Basis

ITV Direct General Ledger As of September 30, 2005

Type	Date	Num	Name	Split	Debit	Credit	Balance
Check	6/24/2005	8309	KOIN	-SPLIT-		1,912.50	-145,706.64
Check	6/24/2005	8310	KTBU	-SPLIT-		340.00	-146,046.64
Check	6/24/2005	8311	KTVN	-SPLIT-		488.75	-146,535.39
Check	6/24/2005	8312	KTXH	-SPLIT-		255.00	-146,790.39
Check	6/24/2005	8313	KZTV	-SPLIT-		1,742.50	-148,532.89
Check	6/24/2005	8314	OXYG	-SPLIT-		21,250.00	-169,782.89
Check	6/24/2005	8315	PPIN	-SPLIT-		15,632.35	-185,415.24
Check	6/24/2005	8316	SHPL	-SPLIT-		9,250.00	-194,665.24
Check	6/24/2005	8317	Zephyr Media	-SPLIT-		42,000.00	-236,665.24
Check	6/24/2005	8318	STUF	-SPLIT-		425.00	-237,090.24
Check	6/24/2005	8319	SUNS	-SPLIT-		4,101.25	-241,191.49
Check	6/24/2005	8320	TVSS	-SPLIT-		10,500.00	-251,691.49
Check	6/24/2005	8321	WBFS-Miami	-SPLIT-		2,890.00	-254,581.49
Check	6/24/2005	8322	WDCA	-SPLIT-		2,975.00	-257,556.49
Check	6/24/2005	8323	WDV	-SPLIT-		425.00	-257,981.49
Check	6/24/2005	8324	WIZE	-SPLIT-		17,000.00	-274,981.49
Check	6/24/2005	8325	WJBK	-SPLIT-		10,710.00	-285,691.49
Check	6/24/2005	8326	WOTV	-SPLIT-	0.00		-285,691.49
Check	6/24/2005	8327	WPLG	-SPLIT-		637.50	-286,328.99
Check	6/24/2005	8328	WPTA	-SPLIT-		127.50	-286,456.49
Check	6/24/2005	8329	WPMR	-SPLIT-		2,167.50	-288,623.99
Check	6/24/2005	8330	WSDM	-SPLIT-		331.50	-288,955.49
Check	6/24/2005	8331	WTOL	-SPLIT-		255.00	-289,210.49
Check	6/24/2005	8332	WUTV	-SPLIT-		6,035.00	-295,245.49
Check	6/24/2005	8333	WVNY	-SPLIT-		680.00	-295,925.49
Check	6/24/2005	8334	YES	-SPLIT-		1,402.50	-297,327.99
Check	6/24/2005	8335	Fairway Media	-SPLIT-		18,657.50	-315,985.49
Check	6/24/2005	8336	Fairway Media	-SPLIT-		6,630.00	-322,615.49
Check	6/24/2005	8337	PAX	-SPLIT-		57,035.00	-379,650.49
Deposit	6/30/2005		Direct Marketing Concepts, ...		125,000.00		-254,650.49
Deposit	7/1/2005		Direct Marketing Concepts, ...		125,000.00		-129,650.49
Check	7/1/2005	8338	ACTN	-SPLIT-		8,287.50	-137,937.99
Check	7/1/2005	8339	AUCF	-SPLIT-		1,423.75	-139,361.74
Check	7/1/2005	8340	BFAS	-SPLIT-		297.50	-139,659.24
Check	7/1/2005	8341	Zephyr Media	-SPLIT-		11,500.00	-151,159.24
Check	7/1/2005	8342	CCMA	-SPLIT-		892.50	-152,051.74
Check	7/1/2005	8343	CCNE	-SPLIT-		3,315.00	-155,366.74
Check	7/1/2005	8344	CCOX	-SPLIT-		607.75	-155,974.49
Check	7/1/2005	8345	CORT	-SPLIT-		34,000.00	-189,974.49
Check	7/1/2005	8346	CTLG	-SPLIT-		1,232.50	-191,206.99
Check	7/1/2005	8347	DISC	-SPLIT-		39,100.00	-230,306.99
Check	7/1/2005	8348	FTV	-SPLIT-		318.75	-230,625.74
Check	7/1/2005	8349	FSAZ	-SPLIT-		1,253.75	-231,879.49

ITV00347

Accrual Basis

ITV Direct

General Ledger

As of September 30, 2005

Type	Date	Num	Name	Split	Debit	Credit	Balance
Check	7/1/2005	8350	FSCO	-SPLT-		1,593.75	-233,473.24
Check	7/1/2005	8351	FSDT	-SPLT-		3,655.00	-237,128.24
Check	7/1/2005	8352	FSFL	-SPLT-		3,910.00	-241,038.24
Check	7/1/2005	8353	FSNE	-SPLT-		2,210.00	-243,248.24
Check	7/1/2005	8354	FSNM	-SPLT-		1,955.00	-245,203.24
Check	7/1/2005	8355	FSRM	-SPLT-		892.50	-246,095.74
Check	7/1/2005	8356	FSSO	-SPLT-		1,955.00	-248,050.74
Check	7/1/2005	8357	FSSW	-SPLT-		2,231.25	-250,281.99
Check	7/1/2005	8358	FSW2	-SPLT-		2,337.50	-252,619.49
Check	7/1/2005	8359	FSWE	-SPLT-		3,400.00	-256,019.49
Check	7/1/2005	8360	GOOD	-SPLT-		1,572.50	-257,591.99
Check	7/1/2005	8361	HLCG	-SPLT-		1,190.00	-258,781.99
Check	7/1/2005	8362	INSP	-SPLT-		3,145.00	-261,926.99
Check	7/1/2005	8363	KASY	-SPLT-		510.00	-262,436.99
Check	7/1/2005	8364	KBHK	-SPLT-		318.75	-262,755.74
Check	7/1/2005	8365	KCOP	-SPLT-		5,652.50	-268,408.24
Check	7/1/2005	8366	KDPX	-SPLT-		297.50	-268,705.74
Check	7/1/2005	8367	KDVR	-SPLT-		382.50	-269,088.24
Check	7/1/2005	8368	KEVN	-SPLT-		382.50	-269,470.74
Check	7/1/2005	8369	KGMB	-SPLT-		1,992.17	-271,462.91
Check	7/1/2005	8370	KGMC	-SPLT-		297.50	-271,760.41
Check	7/1/2005	8371	KITV	-SPLT-		309.89	-272,070.30
Check	7/1/2005	8372	KLTV	-SPLT-		85.00	-272,155.30
Check	7/1/2005	8373	KMVU	-SPLT-		127.50	-272,282.80
Check	7/1/2005	8374	KNIN	-SPLT-		510.00	-273,175.30
Check	7/1/2005	8375	KNSD	-SPLT-		382.50	-273,175.30
Check	7/1/2005	8376	KOBB	-SPLT-		255.00	-273,430.30
Check	7/1/2005	8377	KOIN	-SPLT-		850.00	-274,280.30
Check	7/1/2005	8378	KPNZ	-SPLT-		722.50	-275,002.80
Check	7/1/2005	8379	KPRC	-SPLT-		12,750.00	-287,752.80
Check	7/1/2005	8380	KRON-TV	-SPLT-		6,120.00	-293,872.80
Check	7/1/2005	8381	KSAS	-SPLT-		722.50	-294,595.30
Check	7/1/2005	8382	KSCC	-SPLT-		127.50	-294,722.80
Check	7/1/2005	8383	KSTU	-SPLT-		361.25	-295,084.05
Check	7/1/2005	8384	KTBU	-SPLT-		3,145.00	-298,229.05
Check	7/1/2005	8385	KTLA (WB)	-SPLT-		3,017.50	-301,246.55
Check	7/1/2005	8386	KTVN	-SPLT-		488.75	-301,735.30
Check	7/1/2005	8387	KTXH	-SPLT-		255.00	-301,990.30
Check	7/1/2005	8388	KUSI	-SPLT-		4,675.00	-306,665.30
Check	7/1/2005	8389	KUTP	-SPLT-		1,190.00	-307,855.30
Check	7/1/2005	8390	KUWB	-SPLT-		701.25	-308,556.55
Check	7/1/2005	8391	KWBQ	-SPLT-		722.50	-309,279.05
Check	7/1/2005	8392	KZTV	-SPLT-		1,657.50	-310,936.55

ITV00348

Accrual Basis

ITV Direct
General Ledger
 As of September 30, 2005

Type	Date	Num	Name	Split	Debit	Credit	Balance
Check	7/1/2005	8393	MAII	-SPLIT-		212.50	-311,149.05
Check	7/1/2005	8394	OXYG	-SPLIT-		8,372.50	-319,521.55
Check	7/1/2005	8395	PCNC	-SPLIT-		786.25	-320,307.80
Check	7/1/2005	8396	PPN	-SPLIT-		15,632.35	-335,940.15
Check	7/1/2005	8397	Zephyr Media	-SPLIT-		16,000.00	-351,940.15
Check	7/1/2005	8398	STUF	-SPLIT-		425.00	-352,365.15
Check	7/1/2005	8399	SUNS	-SPLIT-		3,761.25	-356,126.40
Check	7/1/2005	8400	TRAV	-SPLIT-		5,270.00	-361,396.40
Check	7/1/2005	8401	TTMC	-SPLIT-		382.50	-361,778.90
Check	7/1/2005	8402	TVSS	-SPLIT-		10,500.00	-372,278.90
Check	7/1/2005	8403	WAKA	-SPLIT-	0.00		-372,278.90
Check	7/1/2005	8404	WBDT	-SPLIT-		1,636.25	-373,915.15
Check	7/1/2005	8405	WBNS	-SPLIT-		2,380.00	-376,295.15
Check	7/1/2005	8406	WBLI	-SPLIT-		850.00	-377,145.15
Check	7/1/2005	8407	WCIU	-SPLIT-		1,615.00	-378,760.15
Check	7/1/2005	8408	WDAF	-SPLIT-		1,275.00	-380,035.15
Check	7/1/2005	8409	WENT	-SPLIT-		3,187.50	-383,222.65
Check	7/1/2005	8410	WFQX	-SPLIT-		531.25	-383,753.90
Check	7/1/2005	8411	WFTX	-SPLIT-		1,105.00	-384,858.90
Check	7/1/2005	8412	WGXA	-SPLIT-		1,062.50	-385,921.40
Check	7/1/2005	8413	WGHF	-SPLIT-		382.50	-386,303.90
Check	7/1/2005	8414	Tower Media	-SPLIT-		9,900.00	-396,203.90
Check	7/1/2005	8415	WMT	-SPLIT-		233.75	-396,437.65
Check	7/1/2005	8416	WIZE	-SPLIT-		8,500.00	-404,937.65
Check	7/1/2005	8417	WJBK	-SPLIT-		5,100.00	-410,037.65
Check	7/1/2005	8418	WJMW	-SPLIT-		170.00	-410,207.65
Check	7/1/2005	8419	WKBT	-SPLIT-		403.75	-410,611.40
Check	7/1/2005	8420	WLNS	-SPLIT-		255.00	-410,866.40
Check	7/1/2005	8421	WLNY-TV	-SPLIT-		5,355.00	-416,221.40
Check	7/1/2005	8422	WMCN	-SPLIT-		1,275.00	-417,496.40
Check	7/1/2005	8423	WNYW	-SPLIT-		1,020.00	-418,516.40
Check	7/1/2005	8424	WOTV	-SPLIT-	0.00	1,211.25	-419,727.65
Check	7/1/2005	8425	WPLG	-SPLIT-		2,401.25	-422,128.90
Check	7/1/2005	8426	WPMR	-SPLIT-		1,020.00	-423,148.90
Check	7/1/2005	8427	WRIC	-SPLIT-		221.00	-423,369.90
Check	7/1/2005	8428	WSDM	-SPLIT-		340.00	-423,709.90
Check	7/1/2005	8429	WTVK	-SPLIT-		595.00	-424,304.90
Check	7/1/2005	8430	WUHF	-SPLIT-		2,805.00	-427,109.90
Check	7/1/2005	8431	WUTV	-SPLIT-		12,750.00	-439,859.90
Check	7/1/2005	8432	WMOR	-SPLIT-		2,082.50	-441,942.40
Check	7/1/2005	8433	XUPN	-SPLIT-		382.50	-442,324.90
Check	7/1/2005	8434	YES	-SPLIT-		24,543.75	-466,868.65
Check	7/1/2005	8435	Fairway Media	-SPLIT-			

ITV00349

Accrual Basis

ITV Direct
General Ledger
 As of September 30, 2005

Type	Date	Num	Name	Split	Debit	Credit	Balance
Check	7/1/2005	8436	PAX	-SPLT-		56,822.50	-523,691.15
Deposit	7/6/2005		Direct Marketing Concepts, ...	Due to Direct Marketing Concept	175,000.00		-348,691.15
Check	7/8/2005	8437	ACTN	-SPLT-		8,287.50	-356,978.65
Check	7/8/2005	8438	AUCT	-SPLT-		1,423.75	-358,402.40
Check	7/8/2005	8439	BFAS	-SPLT-		297.50	-358,699.90
Check	7/8/2005	8440	Zephyr Media	-SPLT-		28,000.00	-386,699.90
Check	7/8/2005	8441	CCMA	-SPLT-		1,317.50	-388,017.40
Check	7/8/2005	8442	CCNE	-SPLT-		4,080.00	-392,097.40
Check	7/8/2005	8443	CCOX	-SPLT-		599.25	-392,696.65
Check	7/8/2005	8444	CORT	-SPLT-		15,300.00	-407,996.65
Check	7/8/2005	8445	CTLG	-SPLT-		977.50	-408,974.15
Check	7/8/2005	8446	DISC	-SPLT-		29,920.00	-438,894.15
Check	7/8/2005	8447	DIYN	-SPLT-		998.75	-439,892.90
Check	7/8/2005	8448	FSAZ	-SPLT-		1,381.25	-441,274.15
Check	7/8/2005	8449	FSCO	-SPLT-		1,593.75	-442,867.90
Check	7/8/2005	8450	FSFL	-SPLT-		4,845.00	-447,712.90
Check	7/8/2005	8451	FSNE	-SPLT-		2,210.00	-449,922.90
Check	7/8/2005	8452	FSNM	-SPLT-		4,250.00	-454,172.90
Check	7/8/2005	8453	FSRM	-SPLT-		2,932.50	-457,105.40
Check	7/8/2005	8454	FSSO	-SPLT-		1,955.00	-459,060.40
Check	7/8/2005	8455	FSSW	-SPLT-		2,231.25	-461,291.65
Check	7/8/2005	8456	FSW2	-SPLT-		2,231.25	-463,522.90
Check	7/8/2005	8457	FSNE	-SPLT-		3,570.00	-467,092.90
Check	7/8/2005	8458	GOOD	-SPLT-		1,572.50	-468,665.40
Check	7/8/2005	8459	HLCC	-SPLT-		1,190.00	-469,855.40
Check	7/8/2005	8460	INSP	-SPLT-		3,145.00	-473,000.40
Check	7/8/2005	8461	KASY	-SPLT-		510.00	-473,510.40
Check	7/8/2005	8462	KCOP	-SPLT-		1,445.00	-474,955.40
Check	7/8/2005	8463	KDPX	-SPLT-		297.50	-475,252.90
Check	7/8/2005	8464	KDOC TV	-SPLT-	0.00		-475,252.90
Check	7/8/2005	8465	KOBB	-SPLT-		255.00	-475,507.90
Check	7/8/2005	8466	KOIN	-SPLT-		637.50	-476,145.40
Check	7/8/2005	8467	KOLD	-SPLT-		1,445.00	-477,590.40
Check	7/8/2005	8468	KOTV	-SPLT-		3,060.00	-480,650.40
Check	7/8/2005	8469	KPNZ	-SPLT-		722.50	-481,372.90
Check	7/8/2005	8470	KPRC	-SPLT-		4,250.00	-485,622.90
Check	7/8/2005	8471	KRIS	-SPLT-		765.00	-486,387.90
Check	7/8/2005	8472	KRON-TV	-SPLT-		6,120.00	-492,507.90
Check	7/8/2005	8473	KSAS	-SPLT-		1,317.50	-493,825.40
Check	7/8/2005	8474	KSCC	-SPLT-		127.50	-493,952.90
Check	7/8/2005	8475	KTBU	-SPLT-		3,485.00	-497,437.90
Check	7/8/2005	8476	KTLA (WB)	-SPLT-		3,867.50	-501,305.40
Check	7/8/2005	8477	KTVN	-SPLT-		488.75	-501,794.15

ITV00350

Accrual Basis

ITV Direct

General Ledger

As of September 30, 2005

Type	Date	Num	Name	Split	Debit	Credit	Balance
Check	7/8/2005	8478	KUSI	-SPLIT-		1,360.00	-503,154.15
Check	7/8/2005	8479	KUTP	-SPLIT-		1,147.50	-504,301.65
Check	7/8/2005	8480	KWBQ	-SPLIT-		722.50	-505,024.15
Check	7/8/2005	8481	KZTV	-SPLIT-		807.50	-505,831.65
Check	7/8/2005	8482	MALL	-SPLIT-		722.50	-506,554.15
Check	7/8/2005	8483	OXYG	-SPLIT-		6,290.00	-512,844.15
Check	7/8/2005	8484	PONC	-SPLIT-		786.25	-513,630.40
Check	7/8/2005	8485	PPIN	-SPLIT-		15,632.35	-529,262.75
Check	7/8/2005	8486	Zephyr Media	-SPLIT-		16,000.00	-545,262.75
Check	7/8/2005	8487	STUF	-SPLIT-		425.00	-545,687.75
Check	7/8/2005	8488	TRAV	-SPLIT-		2,040.00	-547,727.75
Check	7/8/2005	8489	TTMC	-SPLIT-		382.50	-548,110.25
Check	7/8/2005	8490	TVSS	-SPLIT-		21,000.00	-569,110.25
Check	7/8/2005	8491	WAKA	-SPLIT-		1,636.25	-570,746.50
Check	7/8/2005	8492	WBDT	-SPLIT-	0.00	2,380.00	-573,126.50
Check	7/8/2005	8493	WBNS	-SPLIT-		212.50	-573,339.00
Check	7/8/2005	8494	WBLI	-SPLIT-		1,615.00	-574,954.00
Check	7/8/2005	8495	WCU	-SPLIT-		1,275.00	-576,229.00
Check	7/8/2005	8496	WDAF	-SPLIT-		2,040.00	-578,269.00
Check	7/8/2005	8497	WDCA	-SPLIT-		5,503.75	-583,772.75
Check	7/8/2005	8498	WENT	-SPLIT-		531.25	-584,304.00
Check	7/8/2005	8499	WFOX	-SPLIT-		1,870.00	-586,174.00
Check	7/8/2005	8500	WFTX	-SPLIT-		1,062.50	-587,236.50
Check	7/8/2005	8501	WGBA	-SPLIT-		212.50	-587,449.00
Check	7/8/2005	8502	WGHP	-SPLIT-		212.50	-587,661.50
Check	7/8/2005	8503	WHBQ	-SPLIT-		1,508.75	-589,170.25
Check	7/8/2005	8504	WTL	-SPLIT-		8,500.00	-597,670.25
Check	7/8/2005	8505	WIZE	-SPLIT-		5,610.00	-603,280.25
Check	7/8/2005	8506	WJBL	-SPLIT-		170.00	-603,450.25
Check	7/8/2005	8507	WJWV	-SPLIT-		1,360.00	-604,810.25
Check	7/8/2005	8508	WLNS	-SPLIT-		4,760.00	-609,570.25
Check	7/8/2005	8509	WLNY-TV	-SPLIT-		1,275.00	-610,845.25
Check	7/8/2005	8510	WMON	-SPLIT-		1,615.00	-612,460.25
Check	7/8/2005	8511	WOFL	-SPLIT-		956.25	-613,416.50
Check	7/8/2005	8512	WOGX	-SPLIT-		1,211.25	-614,627.75
Check	7/8/2005	8513	WOV	-SPLIT-		318.75	-614,946.50
Check	7/8/2005	8514	WPLG	-SPLIT-		233.75	-615,180.25
Check	7/8/2005	8515	WPMR	-SPLIT-		3,230.00	-618,410.25
Check	7/8/2005	8516	WRBW	-SPLIT-		1,020.00	-619,430.25
Check	7/8/2005	8517	WRIC	-SPLIT-		221.00	-619,651.25
Check	7/8/2005	8518	WSDM	-SPLIT-		2,040.00	-621,691.25
Check	7/8/2005	8519	WTHI	-SPLIT-		722.50	-622,413.75
Check	7/8/2005	8520	WTOL	-SPLIT-			

ITV00351

Accrual Basis

ITV Direct General Ledger As of September 30, 2005

Type	Date	Num	Name	Split	Debit	Credit	Balance
Check	7/8/2005	8521	WTVG	-SPLIT-		1,105.00	-623,518.75
Check	7/8/2005	8522	WTVK	-SPLIT-		1,020.00	-624,538.75
Check	7/8/2005	8523	WTVF	-SPLIT-		1,105.00	-625,643.75
Check	7/8/2005	8524	WUHF	-SPLIT-		595.00	-626,238.75
Check	7/8/2005	8525	WUTV	-SPLIT-		2,805.00	-629,043.75
Check	7/8/2005	8526	WNNY	-SPLIT-		340.00	-629,383.75
Check	7/8/2005	8527	WMOR	-SPLIT-		13,600.00	-642,983.75
Check	7/8/2005	8528	XUPN	-SPLIT-		1,381.25	-644,365.00
Check	7/8/2005	8529	Media Fusion Marketing	-SPLIT-		255.00	-644,620.00
Check	7/8/2005	8530	Fairway Media	-SPLIT-		45,368.75	-689,988.75
Check	7/8/2005	8531	PAX	-SPLIT-		68,382.50	-758,371.25
Check	7/8/2005	8532	KDVR	-SPLIT-		382.50	-758,753.75
Check	7/8/2005	8533	KEYY	-SPLIT-		722.50	-759,476.25
Check	7/8/2005	8534	KEVN	-SPLIT-		382.50	-759,858.75
Check	7/8/2005	8535	KGMB	-SPLIT-		297.50	-761,850.92
Check	7/8/2005	8536	KGMC	-SPLIT-		1,992.17	-762,148.42
Check	7/8/2005	8537	KITV	-SPLIT-		309.89	-762,458.31
Check	7/8/2005	8538	KMVU	-SPLIT-		42.50	-762,500.81
Check	7/8/2005	8539	KNIN	-SPLIT-		467.50	-762,968.31
Check	7/8/2005	8540	KNSD	-SPLIT-		382.50	-763,350.81
Deposit	7/14/2005		Direct Marketing Concepts, ...		225,000.00		-538,350.81
Deposit	7/14/2005	8543	Direct Marketing Concepts, ...		200,000.00		-338,350.81
Check	7/14/2005	8544	KNWA	-SPLIT-		1,105.00	-339,455.81
Check	7/15/2005		KDOC TV	-SPLIT-		2,550.00	-342,005.81
Check	7/15/2005	8545	Direct Marketing Concepts, ...		150,000.00		-192,005.81
Check	7/15/2005	8546	AUCT	-SPLIT-		0.00	-192,005.81
Check	7/15/2005	8547	CCMA	-SPLIT-		1,105.00	-193,110.81
Check	7/15/2005	8548	CCNE	-SPLIT-		4,420.00	-197,530.81
Check	7/15/2005	8549	CORT	-SPLIT-		24,650.00	-222,180.81
Check	7/15/2005	8550	CTLG	-SPLIT-		1,232.50	-223,413.31
Check	7/15/2005	8551	Food Network	-SPLIT-		5,950.00	-229,363.31
Check	7/15/2005	8552	FSAZ	-SPLIT-		1,997.50	-231,360.81
Check	7/15/2005	8553	FSNW	-SPLIT-		807.50	-232,168.31
Check	7/15/2005	8554	FSRM	-SPLIT-		1,615.00	-233,783.31
Check	7/15/2005	8555	FSSW	-SPLIT-		3,867.50	-237,650.81
Check	7/15/2005	8556	FSW2	-SPLIT-		2,337.50	-239,988.31
Check	7/15/2005	8557	FSWE	-SPLIT-		3,400.00	-243,388.31
Check	7/15/2005	8558	GOOD	-SPLIT-		1,572.50	-244,960.81
Check	7/15/2005	8559	HLCG	-SPLIT-		1,190.00	-246,150.81
Check	7/15/2005	8560	INSP	-SPLIT-		3,145.00	-249,295.81
Check	7/15/2005	8561	KASY	-SPLIT-		510.00	-249,805.81
Check	7/15/2005	8562	KDFX	-SPLIT-		297.50	-250,103.31
Check	7/15/2005		KDVR	-SPLIT-		255.00	-250,358.31

ITV00352

Accrual Basis

ITV Direct General Ledger As of September 30, 2005

Type	Date	Num	Name	Split	Debit	Credit	Balance
Check	7/15/2005	8563	KECY	-SPLT-		340.00	-250,998.31
Check	7/15/2005	8564	KEVN	-SPLT-		382.50	-251,080.81
Check	7/15/2005	8565	KGMB	-SPLT-		1,992.17	-253,072.98
Check	7/15/2005	8566	KGMC	-SPLT-		297.50	-253,370.48
Check	7/15/2005	8567	KJRH	-SPLT-		1,423.75	-254,794.23
Check	7/15/2005	8568	KLTV	-SPLT-		743.75	-255,537.98
Check	7/15/2005	8569	KNIN	-SPLT-		510.00	-256,047.98
Check	7/15/2005	8570	KOBB	-SPLT-		255.00	-256,302.98
Check	7/15/2005	8571	KOIN	-SPLT-		2,550.00	-258,852.98
Check	7/15/2005	8572	KOLD	-SPLT-		2,550.00	-261,402.98
Check	7/15/2005	8573	KPNZ	-SPLT-		722.50	-262,125.48
Check	7/15/2005	8574	KPRC	-SPLT-		6,290.00	-268,415.48
Check	7/15/2005	8575	KRON-TV	-SPLT-		6,120.00	-274,535.48
Check	7/15/2005	8576	KSAS	-SPLT-		127.50	-274,662.98
Check	7/15/2005	8577	KSCC	-SPLT-		127.50	-274,790.48
Check	7/15/2005	8578	KSTU	-SPLT-		170.00	-274,960.48
Check	7/15/2005	8579	KTBV	-SPLT-		3,038.75	-277,999.23
Check	7/15/2005	8580	KTLL (WB)	-SPLT-		2,167.50	-280,166.73
Check	7/15/2005	8581	KTNN	-SPLT-		488.75	-280,655.48
Check	7/15/2005	8582	KLTP	-SPLT-		850.00	-281,505.48
Check	7/15/2005	8583	KLWB	-SPLT-		212.50	-281,717.98
Check	7/15/2005	8584	KZTV	-SPLT-		935.00	-282,652.98
Check	7/15/2005	8585	MALL	-SPLT-		510.00	-283,162.98
Check	7/15/2005	8586	STUF	-SPLT-		425.00	-283,587.98
Check	7/15/2005	8587	TRAV	-SPLT-		5,015.00	-288,602.98
Check	7/15/2005	8588	TTMC	-SPLT-		382.50	-288,985.48
Check	7/15/2005	8589	WBDT	-SPLT-		1,168.75	-290,154.23
Check	7/15/2005	8590	WBRC	-SPLT-		1,275.00	-291,429.23
Check	7/15/2005	8591	WCU	-SPLT-		1,615.00	-293,044.23
Check	7/15/2005	8592	WDFA	-SPLT-		1,275.00	-294,319.23
Check	7/15/2005	8593	WDCA	-SPLT-		2,635.00	-296,954.23
Check	7/15/2005	8594	WFLD	-SPLT-		5,525.00	-302,479.23
Check	7/15/2005	8595	WFOX	-SPLT-		531.25	-303,010.48
Check	7/15/2005	8596	WFTX	-SPLT-		1,870.00	-304,880.48
Check	7/15/2005	8597	WMT	-SPLT-		1,891.25	-306,771.73
Check	7/15/2005	8598	WIZE	-SPLT-		16,000.30	-322,772.03
Check	7/15/2005	8599	WJBK	-SPLT-		5,610.00	-328,382.03
Check	7/15/2005	8600	WKBT	-SPLT-		403.75	-328,785.78
Check	7/15/2005	8601	WLNS	-SPLT-		255.00	-329,040.78
Check	7/15/2005	8602	WLNY-TV	-SPLT-		6,970.00	-336,010.78
Check	7/15/2005	8603	WMCN	-SPLT-		1,275.00	-337,285.78
Check	7/15/2005	8604	WOFL	-SPLT-		1,530.00	-338,815.78
Check	7/15/2005	8605	WOGX	-SPLT-		658.75	-339,474.53

Accrual Basis

ITV Direct General Ledger As of September 30, 2005

Type	Date	Num	Name	Split	Debit	Credit	Balance
Check	7/15/2005	8606	WPLG	-SPLT-		318.75	-339,793.28
Check	7/15/2005	8607	WPTA	-SPLT-		573.75	-340,367.03
Check	7/15/2005	8608	WPWR	-SPLT-		1,933.75	-342,300.78
Check	7/15/2005	8609	WRBW	-SPLT-		765.00	-343,065.78
Check	7/15/2005	8610	WTOL	-SPLT-		212.50	-343,278.28
Check	7/15/2005	8611	WTTG	-SPLT-		425.00	-343,703.28
Check	7/15/2005	8612	WTVK	-SPLT-		1,020.00	-344,723.28
Check	7/15/2005	8613	WTVT	-SPLT-		2,550.00	-347,273.28
Check	7/15/2005	8614	WUHF	-SPLT-		595.00	-347,868.28
Check	7/15/2005	8615	WUTV	-SPLT-		2,805.00	-350,673.28
Check	7/15/2005	8616	WMNY	-SPLT-		722.50	-351,395.78
Check	7/15/2005	8617	WMOR	-SPLT-		11,475.00	-362,870.78
Check	7/15/2005	8618	XUPN	-SPLT-		1,381.25	-364,252.03
Check	7/15/2005	8619	Fairway Media	-SPLT-		34,140.25	-398,392.28
Check	7/15/2005	8620	PAX	-SPLT-		53,167.50	-451,559.78
Check	7/15/2005	8621	AUCT	-SPLT-		1,423.75	-452,983.53
Deposit	7/19/2005		Direct Marketing Concepts, ...		100,000.00		-352,983.53
Deposit	7/20/2005		Due to Direct Marketing Concept	-SPLT-	531.25		-352,452.28
Deposit	7/22/2005		Direct Marketing Concepts, ...		75,000.00		-277,452.28
Deposit	7/25/2005		Direct Marketing Concepts, ...		100,000.00		-177,452.28
Deposit	7/26/2005		Direct Marketing Concepts, ...		100,000.00		-77,452.28
Deposit	7/28/2005		Direct Marketing Concepts, ...		75,000.00		-2,452.28
Deposit	7/29/2005		Direct Marketing Concepts, ...		10,000.00		7,547.72
Check	8/31/2005	8622	Leo H. Bonarrigo, CPA	Bank Service Charges		4.34	7,543.38
Bill Pmt -Check	9/12/2005		ITV Direct	Accounts Payable		5,000.00	2,543.38
Check	9/24/2005		Commonwealth of Massac...	Client FUNDS ACCOUNT	1,000.00		3,543.38
Check	9/26/2005		Massachusetts Department...	Penalty		490.00	3,053.38
Check	9/28/2005			Tax Payment		23.34	3,030.04
Total Checking - Beverly National					30,132,579.64	30,129,549.60	3,030.04
Client FUNDS ACCOUNT							0.00
Deposit	1/27/2005		Alena Group	Client Media Funding	24,584.90		24,584.90
Check	2/21/2005	TRAN...	ITV Direct	Checking - Beverly National		24,584.09	0.81
Deposit	3/11/2005		ITV Direct	Checking - Beverly National		25,000.00	-24,999.19
Deposit	3/11/2005		Alena Group	Client Media Funding	25,000.00		0.81
Deposit	3/29/2005		Alena Group	Client Media Funding	33,130.10		33,130.91
Check	3/31/2005		ITV Direct	Checking - Beverly National		33,130.00	0.91
Deposit	7/13/2005		Direct Marketing Concepts, ...	Due to Direct Marketing Concept	1,000.00		1,000.91
Check	9/24/2005		ITV Direct	Checking - Beverly National		1,000.00	0.91
Total Client FUNDS ACCOUNT					83,715.00	83,714.09	0.91

ITV00354

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

_____)	
CAPPSEALS, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
DIRECT MARKETING CONCEPTS, INC.,)	
ITV DIRECT, INC., DIRECT	)	C.A. No. 05-11907-JLT
FULFILLMENT, LLC, DONALD)	
BARRETT, and ROBERT MAIHOS,)	
)	
Defendants.)	
_____)	

**AFFIDAVIT OF SCOTT SILVERMAN IN SUPPORT OF CAPPSEALS INC.'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

EXHIBIT J


BEVERLY NATIONAL BANK
 EARNING YOUR TRUST SINCE 1802

240 Cabot Street, Beverly, MA 01915 • 978-922-2100 Member FDIC

Last statement: April 30, 2005
 This statement: May 31, 2005
 Total days in statement period: 31



ITV DIRECT, INC
 HOLD MAIL/FWD TO CUMMINGS CTR

Page 1 of 8
 2-8000216-16
 (601)

Direct inquiries to:
 Deposit Operations, 978-922-2100

Beverly National Bank
 240 Cabot Street
 Beverly, MA 01915-4588

HOME RENOVATIONS, COLLEGE TUITION, VACATION, CAR, DEBT CONSOLIDATION... YOU CAN MAKE IT HAPPEN WITH A HOME EQUITY FROM BEVERLY NATIONAL. CHOOSE EITHER A LOW-RATE HOME EQUITY LINE OF CREDIT OR FIXED-RATE LOAN. CALL FOR DETAILS. AND DON'T FORGET, THERE'S STILL TIME TO CONTRIBUTE TO YOUR IRA. CALL JIM WILLIAMS FOR RETIREMENT PLAN OPTIONS.

Ultimate Bus Success

Account number 2-8000216-16
 Enclosures 601
 Low balance \$49,488.22

Beginning balance \$188,019.70
 Total additions 1,747,757.62
 Total subtractions 1,886,289.10
 Ending balance \$49,488.22

CHECKS

Number	Date	Amount
6793	05-02	11,560.00
6891 *	05-03	619.78
6894 *	05-03	127.50
6908 *	05-03	297.50
6937 *	05-02	170.00
6939 *	05-02	2,550.00
6940 *	05-02	425.00
6964 *	05-02	935.00
6965 *	05-06	595.00
6975 *	05-04	680.00
6999 *	05-04	625.00

Number	Date	Amount
7007 *	05-05	1,572.50
7008 *	05-04	2,358.75
7009 *	05-05	1,020.00
7010 *	05-06	2,550.00
7011 *	05-04	680.00
7014 *	05-06	1,275.00
7016 *	05-06	595.00
7017 *	05-02	7,225.00
7018 *	05-05	340.00
7019 *	05-05	191.25
7021 *	05-05	101.00

ITV00165


BEVERLY NATIONAL BANK
 EARNING YOUR TRUST SINCE 1802

240 Cabot Street, Beverly, MA 01915 • 978-922-2100 Member FDIC

ITV DIRECT, INC.

May 31, 2005

Page 2 of 8

2-8000216-16

Number	Date	Amount
7033	05-05	1,381.25
7034	05-06	255.00
7036 *	05-09	297.50
7037	05-03	1,360.00
7038	05-02	23,545.00
7043 *	05-06	127.50
7044	05-04	170.00
7045	05-04	3,459.00
7046	05-04	255.00
7047	05-10	3,591.25
7049 *	05-02	5,355.00
7050	05-05	765.00
7051	05-09	2,975.00
7052	05-05	106.25
7053	05-04	3,187.50
7054	05-06	1,827.50
7055	05-05	1,275.00
7057 *	05-11	170.00
7058	05-03	3,400.00
7059	05-06	1,317.50
7060	05-04	510.00
7061	05-09	22,525.00
7062	05-03	15,632.35
7064 *	05-03	8,075.00
7065	05-04	212.50
7066	05-04	1,232.50
7067	05-03	6,800.00
7068	05-04	403.75
7069	05-02	5,100.00
7070	05-02	106.25
7071	05-09	297.50
7072	05-11	1,700.00
7073	05-05	1,147.50
7075 *	05-04	722.50
7076	05-05	467.50
7077	05-06	276.25
7078	05-05	3,272.50
7079	05-05	6,162.50
7081 *	05-04	1,020.00
7082	05-11	318.75
7083	05-03	1,000.00

Number	Date	Amount
7092	05-04	8,000.16
7096 *	05-05	191.25
7097	05-05	9,137.50
7098	05-04	2,465.00
7100 *	05-09	382.50
7101	05-05	935.00
7102	05-11	318.75
7103	05-05	1,360.00
7104	05-04	1,190.00
7105	05-04	1,105.00
7106	05-02	998.75
7107	05-02	1,126.25
7110 *	05-16	595.00
7112 *	05-06	552.50
7113	05-02	1,678.75
7115 *	05-09	2,635.00
7116	05-06	255.00
7117	05-05	2,592.50
7118	05-05	1,466.25
7119	05-06	595.00
7120	05-17	1,487.50
7122 *	05-11	1,275.00
7124 *	05-03	340.00
7125	05-02	3,400.00
7126	05-02	1,423.75
7127	05-02	68,773.50
7133 *	05-03	6,469.00
7139 *	05-11	16,575.04
7140	05-10	1,402.50
7141	05-10	531.25
7142	05-11	2,465.00
7143	05-11	2,125.00
7144	05-10	1,020.00
7145	05-09	5,000.00
7146	05-09	6,205.00
7147	05-10	1,700.00
7148	05-10	935.00
7149	05-09	39,100.00
7150	05-10	2,167.50
7151	05-12	3,973.75
7152	05-03	1,000.00



BEVERLY NATIONAL BANK

EARNING YOUR TRUST SINCE 1802

240 Cabot Street, Beverly, MA 01915 • 978-922-2100 Member FDIC

ITV DIRECT, INC.
May 31, 2005

Page 3 of 8
2-8000216-16

Number	Date	Amount
7161 *	05-09	1,572.50
7162	05-10	2,358.75
7163	05-12	2,550.00
7164	05-11	340.00
7165	05-05	1,020.00
7166	05-12	595.00
7167	05-05	3,506.25
7168	05-13	382.50
7169	05-12	6,970.00
7170	05-11	1,105.00
7171	05-12	616.25
7172	05-11	510.00
7173	05-11	255.00
7174	05-05	658.75
7175	05-12	616.25
7176	05-05	1,700.00
7177	05-05	1,020.00
7178	05-11	783.90
7179	05-13	780.00
7180	05-18	148.75
7181	05-11	340.00
7182	05-09	501.50
7183	05-05	297.50
7184	05-11	1,445.00
7185	05-23	3,761.25
7186	05-12	935.00
7187	05-13	1,700.00
7188	05-05	616.25
7189	05-09	1,147.50
7190	05-11	233.75
7191	05-10	1,615.00
7192	05-09	765.00
7193	05-05	191.25
7194	05-05	289.00
7195	05-11	3,272.50
7196	05-16	148.75
7197	05-10	191.25
7198	05-05	2,975.00
7199	05-10	531.25
7200	05-16	1,530.00

Number	Date	Amount
7209	05-12	127.50
7211 *	05-11	5,440.00
7212	05-12	1,275.00
7213	05-12	977.50
7214	05-05	3,060.00
7215	05-05	765.00
7216	05-06	212.50
7217	05-17	170.00
7218	05-10	6,800.00
7219	05-12	1,062.50
7221 *	05-24	2,210.00
7222	05-18	170.00
7223	05-16	9,180.00
7224	05-10	2,380.00
7225	05-10	15,632.35
7226	05-10	212.50
7227	05-09	10,008.75
7228	05-09	16,150.00
7229	05-09	3,400.00
7230	05-10	403.75
7231	05-16	9,000.32
7232	05-09	2,550.00
7233	05-16	127.50
7234	05-05	680.00
7235	05-05	344.25
7236	05-11	722.50
7237	05-13	1,997.50
7238	05-05	1,020.00
7239	05-11	233.75
7240	05-11	191.25
7241	05-06	1,360.00
7242	05-11	276.25
7243	05-12	2,507.50
7244	05-11	12,240.00
7245	05-05	714.00
7246	05-16	106.25
7247	05-11	12,218.75
7248	05-11	3,697.50
7249	05-12	998.75
7250	05-11	3,272.50



BEVERLY NATIONAL BANK
EARNING YOUR TRUST SINCE 1802

240 Cabot Street, Beverly, MA 01915 • 978-922-2100 Member FDIC

ITV DIRECT, INC.
May 31, 2005

Page 4 of 8
2-8000216-16

Number	Date	Amount
7259	05-12	191.25
7260	05-10	2,975.00
7261	05-13	127.50
7262	05-11	3,995.00
7263	05-05	595.00
7264	05-16	382.50
7265	05-13	935.00
7266	05-13	701.25
7267	05-13	1,530.00
7268	05-12	212.50
7269	05-09	3,825.00
7270	05-10	998.75
7271	05-12	616.25
7272	05-05	1,020.00
7273	05-27	174.25
7274	05-17	255.00
7275	05-05	1,615.00
7276	05-05	1,785.00
7277	05-16	552.50
7278	05-12	1,785.00
7279	05-05	1,530.00
7280	05-05	2,210.00
7281	05-16	2,635.00
7282	05-16	255.00
7283	05-16	510.00
7284	05-11	1,466.25
7285	05-17	1,402.50
7286	05-05	318.75
7287	05-13	935.00
7288	05-10	6,120.00
7289	05-05	2,273.75
7290	05-11	46,716.00
7291	05-12	1,296.25
7292	05-10	255.00
7293	05-02	3,500.00
7294	05-18	8,287.52
7295	05-18	1,402.50
7296	05-18	531.25
7297	05-18	2,465.00
7298	05-18	3,825.00

Number	Date	Amount
7307	05-13	1,381.25
7308	05-13	8,925.00
7309	05-16	1,190.00
7310	05-13	8,500.00
7311	05-13	2,677.50
7312	05-13	1,105.00
7313	05-12	2,295.00
7314	05-23	5,482.50
7315	05-23	6,502.50
7316	05-18	1,572.50
7317	05-18	2,358.75
7318	05-16	595.00
7319	05-12	1,020.00
7320	05-17	1,360.00
7321	05-12	765.00
7322	05-12	4,780.75
7323	05-13	595.00
7325 *	05-17	1,445.00
7326	05-16	807.50
7327	05-12	340.00
7328	05-12	850.00
7329	05-12	127.50
7330	05-12	1,423.75
7331	05-16	616.25
7332	05-12	3,400.00
7333	05-13	170.00
7334	05-13	599.45
7335	05-17	510.00
7336	05-13	170.00
7337	05-12	212.50
7338	05-18	501.50
7339	05-13	595.00
7340	05-25	2,061.25
7341	05-12	85.00
7342	05-23	595.00
7343	05-17	1,955.00
7344	05-12	616.25
7345	05-19	297.50
7346	05-17	255.00
7347	05-18	956.25



BEVERLY NATIONAL BANK
EARNING YOUR TRUST SINCE 1802

240 Cabot Street, Beverly, MA 01915 • 978-922-2100 Member FDIC

ITV DIRECT, INC
May 31, 2005

Page 5 of 8
2-8000216-16

Number	Date	Amount
7356	05-20	850.00
7357	05-12	233.75
7358	05-16	1,530.00
7359	05-12	255.00
7360	05-11	297.50
7361	05-26	4,398.75
7362	05-12	2,210.00
7363	05-12	552.50
7364	05-11	4,165.00
7365	05-19	765.00
7367 *	05-12	42.50
7368	05-19	531.25
7369	05-12	2,125.00
7370	05-16	1,466.25
7371	05-17	1,020.00
7373 *	05-12	765.00
7374	05-12	106.25
7375	05-17	127.50
7376	05-20	3,400.00
7377	05-12	297.50
7378	05-20	1,317.50
7379	05-18	510.00
7380	05-18	3,315.00
7382 *	05-13	871.25
7383	05-17	15,632.35
7384	05-19	20,187.50
7385	05-18	212.50
7386	05-18	616.25
7387	05-16	11,028.75
7388	05-17	3,910.00
7389	05-17	5,100.00
7390	05-18	403.75
7391	05-20	4,500.16
7392	05-17	2,550.00
7393	05-16	297.50
7394	05-12	114.75
7395	05-16	722.50
7396	05-16	531.25
7397	05-18	276.25
7398	05-23	1,806.25

Number	Date	Amount
7407	05-19	595.00
7408	05-16	191.25
7409	05-16	8,000.16
7411 *	05-12	1,593.75
7412	05-12	531.25
7413	05-24	446.25
7414	05-23	488.75
7415	05-11	8,627.50
7416	05-19	106.25
7417	05-13	127.50
7418	05-16	2,465.00
7419	05-19	2,805.00
7420	05-12	595.00
7421	05-18	382.50
7422	05-24	935.00
7423	05-13	1,296.25
7424	05-12	340.00
7425	05-13	1,317.50
7426	05-16	42.50
7427	05-17	935.00
7428	05-17	1,253.75
7429	05-12	1,020.00
7430	05-24	1,530.00
7431	05-12	1,615.00
7432	05-23	552.50
7433	05-12	127.50
7435 *	05-12	4,420.00
7436	05-16	2,635.00
7437	05-16	255.00
7438	05-12	2,040.00
7439	05-23	2,252.50
7440	05-12	1,466.25
7441	05-17	1,487.50
7442	05-12	510.00
7443	05-12	318.75
7444	05-20	1,530.00
7445	05-17	1,020.00
7446	05-16	5,100.00
7447	05-11	3,697.50
7448	05-19	66,966.00



BEVERLY NATIONAL BANK
EARNING YOUR TRUST SINCE 1802

240 Cabot Street, Beverly, MA 01915 • 978-922-2100 Member FDIC

ITV DIRECT, INC
May 31, 2005

Page 6 of 8
2-8000216-16

Number	Date	Amount
7459	05-26	106.25
7460	05-26	501.50
7461	05-19	148.75
7463 *	05-27	170.00
7464	05-26	1,041.25
7465	05-19	382.50
7466	05-27	1,530.00
7467	05-19	616.25
7468	05-25	892.50
7469	05-24	1,487.50
7470	05-23	765.00
7471	05-19	191.25
7472	05-19	212.50
7473	05-19	63.75
7474	05-25	4,590.00
7476 *	05-25	127.50
7477	05-19	935.00
7478	05-25	233.75
7479	05-27	1,530.00
7480	05-25	255.00
7481	05-26	3,612.50
7482	05-19	2,210.00
7483	05-19	276.25
7484	05-26	4,760.00
7485	05-25	765.00
7486	05-26	3,060.00
7487	05-26	106.25
7489 *	05-25	3,187.50
7490	05-26	1,083.75
7491	05-26	1,742.50
7492	05-19	637.50
7493	05-19	106.25
7494	05-27	3,400.00
7495	05-27	1,062.50
7496	05-25	510.00
7498 *	05-25	318.75
7499	05-24	15,632.35
7500	05-24	14,777.25
7501	05-25	212.50
7502	05-23	6,460.00
7503	05-25	10,000.00

Number	Date	Amount
7511	05-19	1,700.00
7512	05-26	807.50
7513	05-19	892.50
7514	05-26	276.25
7515	05-31	2,465.00
7516	05-31	595.00
7517	05-27	977.50
7518	05-26	13,302.50
7520 *	05-25	807.50
7521	05-25	2,847.50
7522	05-25	7,500.00
7523	05-26	595.00
7524	05-31	276.25
7525	05-18	8,000.16
7526	05-19	531.25
7528 *	05-26	488.75
7529	05-31	3,400.00
7530	05-26	255.00
7531	05-25	7,225.00
7532	05-19	595.00
7533	05-31	382.50
7534	05-27	1,870.00
7535	05-31	595.00
7536	05-25	1,742.50
7537	05-26	1,020.00
7538	05-26	1,572.50
7539	05-19	297.50
7541 *	05-19	1,615.00
7542	05-27	552.50
7543	05-31	1,062.50
7546 *	05-19	1,020.00
7547	05-31	1,870.00
7548	05-26	765.00
7549	05-26	425.00
7550	05-31	1,402.50
7551	05-19	255.00
7552	05-19	420.75
7553	05-27	1,105.00
7554	05-26	1,742.50
7555	05-25	1,423.75
7556	05-31	68,000.75

ITV00170

**BEVERLY NATIONAL BANK**

EARNING YOUR TRUST SINCE 1802

240 Cabot Street, Beverly, MA 01915 • 978-922-2100 Member FDIC

ITV-DIRECT, INC

May 31, 2005

Page 7 of 8

2-8000216-16

Number	Date	Amount
7565	05-27	2,125.00
7566	05-24	510.00
7567	05-25	8,287.52
7568	05-25	1,402.50
7569	05-25	531.25
7570	05-25	2,465.00
7571	05-25	2,125.00
7572	05-25	510.00
7573	05-23	20,655.00
7574	05-23	680.00
7575	05-25	935.00
7576	05-25	31,705.00
7577	05-26	913.75
7578	05-23	956.25
7579	05-23	5,100.00
7580	05-25	4,250.00
7581	05-24	5,695.00
7582	05-23	1,232.50
7583	05-27	1,360.00
7584	05-31	5,482.50
7585	05-31	6,502.50
7586	05-24	1,572.50
7587	05-24	6,321.00
7588	05-24	983.00
7589	05-31	34,363.50
7590	05-23	1,000.00
7596 *	05-24	19,524.50
7598 *	05-31	26,520.00
7599	05-31	170.00
7603 *	05-31	595.00
7604	05-27	1,020.00
7607 *	05-27	3,973.75
7610 *	05-31	42.50
7611	05-31	935.00
7616 *	05-27	1,700.00
7618 *	05-27	1,700.00
7620 *	05-27	1,700.00
7626 *	05-27	148.75
7629 *	05-31	85.00
7632 *	05-27	297.50

Number	Date	Amount
7641	05-27	212.50
7642	05-27	208.25
7643	05-27	765.00
7644	05-31	212.50
7648 *	05-27	2,975.00
7654 *	05-27	276.25
7657 *	05-31	1,190.00
7658	05-27	85.00
7661 *	05-31	1,615.00
7662	05-27	1,466.25
7664 *	05-27	212.50
7665	05-27	106.25
7668 *	05-27	148.75
7679 *	05-31	361.25
7681 *	05-27	680.00
7682	05-27	114.75
7684 *	05-31	2,061.25
7686 *	05-31	340.00
7690 *	05-27	714.00
7695 *	05-31	1,062.50
7696	05-31	3,315.00
7697	05-31	3,000.00
7699 *	05-31	8,000.16
7700	05-27	573.75
7701	05-27	531.25
7707 *	05-27	595.00
7711 *	05-26	4,080.00
7712	05-31	2,061.25
7714 *	05-26	2,252.50
7715	05-26	2,125.00
7716	05-27	2,040.00
7718 *	05-27	1,615.00
7719	05-27	3,570.00
7721 *	05-31	127.50
7722	05-27	446.25
7726 *	05-31	1,487.50
7727	05-27	352.75
7730 *	05-26	17,935.00
7733 *	05-25	101,753.50
7741 *	05-31	12,580.00


BEVERLY NATIONAL BANK
 EARNING YOUR TRUST SINCE 1802

240 Cabot Street, Beverly, MA 01915 • 978-922-2100 Member FDIC

 ITV DIRECT, INC.
 May 31, 2005

 Page 8 of 8
 2-8000216-16

Date	Description	Additions
05-04	Telephone Transfer	175,000.00
05-05	Telephone Transfer	150,000.00
05-10	Telephone Transfer	125,000.00
05-12	Telephone Transfer	125,000.00
05-16	Telephone Transfer	175,000.00
05-17	Telephone Transfer	75,000.00
05-18	Telephone Transfer	150,000.00
05-20	Telephone Transfer	160,000.00
05-24	Deposit	7,757.62
05-24	Telephone Transfer	180,000.00
05-26	Telephone Transfer	200,000.00
05-27	Telephone Transfer	75,000.00

DAILY BALANCES

Date	Amount	Date	Amount	Date	Amount
04-30	188,019.70	05-11	80,615.61	05-23	242,805.79
05-02	196,397.45	05-12	127,530.86	05-24	347,209.06
05-03	146,391.32	05-13	78,636.41	05-25	102,996.79
05-04	270,873.16	05-16	174,330.93	05-26	225,441.38
05-05	350,308.31	05-17	176,111.08	05-27	254,741.13
05-06	331,289.56	05-18	272,559.40	05-31	49,488.22
05-09	168,645.40	05-19	153,292.90		
05-10	232,644.30	05-20	301,695.24		

ITV00172

**BEVERLY NATIONAL BANK**

EARNING YOUR TRUST SINCE 1802

240 Cabot Street, Beverly, MA 01915 • 978-922-2100 Member FDIC

Last statement: May 31, 2005
 This statement: June 30, 2005
 Total days in statement period: 30

Page 1 of 8
 2-8000216-16
 (578)



ITV DIRECT, INC
 HOLD MAIL/FWD TO CUMMINGS CTR

Direct inquiries to:
 Deposit Operations, 978 922-2100

Beverly National Bank
 240 Cabot Street
 Beverly, MA 01915-4588

HOME RENOVATIONS, COLLEGE TUITION, VACATION, CAR, DEBT CONSOLIDATION... YOU CAN MAKE IT HAPPEN WITH A HOME EQUITY FROM BEVERLY NATIONAL. CHOOSE EITHER A LOW-RATE HOME EQUITY LINE OF CREDIT OR FIXED-RATE LOAN. CALL FOR DETAILS. AND DON'T FORGET, THERE'S STILL TIME TO CONTRIBUTE TO YOUR IRA. CALL JIM WILLIAMS FOR RETIREMENT PLAN OPTIONS.

Ultimate Bus Success

Account number	2-8000216-16	Beginning balance	\$49,488.22
Enclosures	578	Total additions	2,115,442.50
Low balance	\$60,927.33	Total subtractions	2,027,708.18
		Ending balance	\$137,222.54

CHECKS

Number	Date	Amount
7160	06-14	552.50
7381 *	06-01	6,800.00
7450 *	06-02	319.00
7457 *	06-01	255.00
7462 *	06-03	2,061.25
7475 *	06-07	297.50
7497 *	06-02	2,635.00
7519 *	06-01	1,147.50
7527 *	06-20	63.75
7540 *	06-02	1,530.00
7544 *	06-06	5,270.00

Number	Date	Amount
7597 *	06-02	1,190.00
7600 *	06-01	1,572.50
7601	06-02	1,402.50
7602	06-02	212.50
7606 *	06-02	935.00
7608 *	06-02	595.00
7609	06-02	191.25
7612 *	06-02	340.00
7613	06-02	42.50
7614	06-03	1,700.00
7615	06-01	425.00

**BEVERLY NATIONAL BANK**

EARNING YOUR TRUST SINCE 1802

240 Cabot Street, Beverly, MA 01915 • 978-922-2100 Member FDIC

ITV DIRECT, INC
June 30, 2005Page 2 of 8
2-8000216-16

Number	Date	Amount
7628	06-03	2,061.25
7630 *	06-03	658.75
7631	06-02	807.50
7633 *	06-06	255.00
7635 *	06-02	297.50
7636	06-01	106.25
7638 *	06-01	1,062.50
7639	06-01	2,295.00
7645 *	06-02	4,590.00
7646	06-07	148.75
7647	06-03	255.00
7649 *	06-03	233.75
7650	06-03	765.00
7651	06-02	255.00
7652	06-01	297.50
7653	06-09	2,953.75
7655 *	06-03	5,440.00
7659 *	06-03	170.00
7660	06-03	127.50
7663 *	06-07	743.75
7666 *	06-08	170.00
7667	06-03	3,400.00
7669 *	06-03	807.50
7670	06-02	510.00
7671	06-01	15,632.35
7672	06-01	9,367.00
7673	06-02	467.50
7674	06-02	616.25
7675	06-02	403.75
7676	06-02	4,500.16
7677	06-02	127.50
7678	06-01	2,550.00
7680 *	06-02	297.50
7683 *	06-01	127.50
7685 *	06-01	510.00
7687 *	06-02	276.25
7688	06-02	2,805.00
7689	06-02	595.00
7691 *	06-01	531.25
7692	06-03	19,741.25
7694 *	06-01	2,295.00

Number	Date	Amount
7709	06-02	935.00
7710	06-06	701.25
7713 *	06-02	1,615.00
7717 *	06-03	1,530.00
7720 *	06-06	552.50
7723 *	06-08	255.00
7724	06-01	1,317.50
7725	06-02	1,402.50
7728 *	06-08	1,530.00
7729	06-01	1,020.00
7731 *	06-02	2,273.75
7734 *	06-02	733.52
7735	06-08	8,287.50
7736	06-08	1,190.00
7737	06-08	531.25
7738	06-08	6,250.00
7739	06-10	2,465.00
7740	06-10	2,125.00
7742 *	06-08	1,190.00
7743	06-08	46,325.00
7744	06-08	212.50
7745	06-08	4,866.25
7746	06-08	5,533.50
7747	06-01	3,952.50
7748	06-08	9,350.00
7749	06-01	1,211.25
7750	06-01	12,367.50
7751	06-10	4,717.50
7752	06-10	5,015.00
7753	06-08	1,275.00
7754	06-08	1,402.50
7755	06-08	212.50
7756	06-08	297.50
7757	06-06	1,020.00
7758	06-09	1,020.00
7759	06-06	3,973.75
7760	06-10	467.50
7761	06-08	191.25
7762	06-13	127.50
7763	06-08	807.50
7764	06-06	1,275.00

ITV00174

**BEVERLY NATIONAL BANK**

EARNING YOUR TRUST SINCE 1802

240 Cabot Street, Beverly, MA 01915 • 978-922-2100 Member FDIC

ITV DIRECT, INC
June 30, 2005Page 3 of 8
2-8000216-16

Number	Date	Amount
7772	06-06	148.75
7773	06-16	3,761.25
7774	06-08	340.00
7775	06-10	743.75
7776	06-10	85.00
7777	06-06	616.25
7778	06-08	1,572.50
7779	06-14	255.00
7780	06-09	850.00
7781	06-06	616.25
7782	06-08	1,317.50
7783	06-09	765.00
7784	06-06	144.50
7785	06-06	212.50
7786	06-06	208.25
7787	06-09	4,590.00
7789 *	06-06	531.25
7790	06-06	467.50
7791	06-13	233.75
7793 *	06-09	3,166.25
7794	06-06	2,210.00
7795	06-06	276.25
7796	06-10	4,080.00
7797	06-06	3,145.00
7798	06-08	1,190.00
7799	06-06	3,655.00
7800	06-06	340.00
7801	06-10	531.25
7803 *	06-10	1,062.50
7804	06-10	1,275.00
7805	06-10	1,742.50
7806	06-06	765.00
7807	06-06	106.25
7809 *	06-10	3,400.00
7810	06-06	148.75
7811	06-10	1,062.50
7812	06-08	255.00
7813	06-14	2,953.75
7814	06-14	306.00
7815	06-08	1,572.50
7816	06-07	15,632.35

Number	Date	Amount
7846	06-10	361.25
7847	06-10	297.50
7848	06-06	114.75
7849	06-09	807.50
7850	06-13	722.50
7851	06-17	722.50
7852	06-14	510.00
7853	06-06	340.00
7854	06-09	2,800.00
7855	06-10	340.00
7856	06-10	276.25
7857	06-09	11,645.00
7858	06-06	714.00
7859	06-09	340.00
7860	06-06	892.50
7862 *	06-09	13,515.00
7863	06-09	403.75
7864	06-09	2,847.50
7866 *	06-06	318.75
7867	06-14	595.00
7868	06-02	10,599.84
7869	06-06	531.25
7871 *	06-16	191.25
7872	06-13	6,587.50
7873	06-13	1,593.75
7874	06-08	4,420.00
7875	06-06	701.25
7876	06-16	382.50
7878 *	06-09	3,867.50
7879	06-08	2,167.50
7880	06-09	1,955.00
7881	06-07	2,635.00
7882	06-13	255.00
7884 *	06-06	1,615.00
7886 *	06-08	1,615.00
7887	06-17	467.50
7888	06-13	1,062.50
7889	06-06	722.50
7890	06-06	892.50
7891	06-13	2,210.00
7892	06-13	255.00


BEVERLY NATIONAL BANK
 EARNING YOUR TRUST SINCE 1802

240 Cabot Street, Beverly, MA 01915 • 978-922-2100 Member FDIC

 ITV DIRECT, INC
 June 30, 2005

 Page 4 of 8
 2-8000216-16

Number	Date	Amount
7900	06-16	1,105.00
7901	06-13	680.00
7902	06-09	13,430.00
7903	06-08	1,423.75
7904	06-16	48.00
7905	06-06	51,838.75
7908 *	06-09	680.00
7909	06-15	8,287.52
7910	06-15	1,402.50
7911	06-15	531.25
7912	06-15	2,465.00
7913	06-15	3,825.00
7914	06-13	14,705.00
7915	06-15	1,190.00
7916	06-14	48,875.00
7917	06-13	2,082.50
7918	06-15	3,060.00
7919	06-16	2,847.50
7920	06-13	2,868.75
7921	06-10	1,976.25
7922	06-13	4,675.00
7923	06-20	5,865.00
7924	06-14	7,395.00
7925	06-13	3,060.00
7926	06-14	7,055.00
7927	06-13	2,465.00
7928	06-13	3,145.00
7929	06-15	212.50
7930	06-15	1,402.50
7931	06-15	212.50
7932	06-15	595.00
7933	06-16	595.00
7934	06-09	4,483.75
7935	06-22	467.50
7936	06-15	191.25
7937	06-16	255.00
7938	06-15	63.75
7939	06-16	1,678.75
7940	06-16	191.25
7941	06-21	743.75
7942	06-16	170.00

Number	Date	Amount
7950	06-20	929.67
7951	06-17	1,317.50
7952	06-16	212.50
7953	06-15	1,190.00
7954	06-09	148.75
7955	06-20	1,360.00
7956	06-22	2,061.25
7957	06-15	743.75
7958	06-21	233.75
7959	06-09	2,805.00
7960	06-09	233.75
7961	06-17	637.50
7962	06-16	913.75
7963	06-09	616.25
7964	06-15	170.00
7965	06-15	765.00
7966	06-09	212.50
7967	06-09	208.25
7968	06-15	4,590.00
7969	06-09	106.25
7970	06-16	127.50
7971	06-09	467.50
7972	06-16	233.75
7973	06-21	3,463.75
7974	06-09	276.25
7975	06-15	4,760.00
7976	06-09	2,805.00
7977	06-09	340.00
7978	06-17	106.25
7979	06-20	446.25
7980	06-09	765.00
7981	06-09	106.25
7982	06-17	3,400.00
7983	06-09	148.75
7984	06-16	1,317.50
7985	06-14	3,145.00
7986	06-24	174.25
7987	06-22	20,315.00
7988	06-15	1,338.75
7989	06-14	26,963.70
7990	06-15	467.50

ITV00176



BEVERLY NATIONAL BANK
EARNING YOUR TRUST SINCE 1802

240 Cabot Street, Beverly, MA 01915 • 978-922-2100 Member FDIC

ITV DIRECT, INC
June 30, 2005

Page 5 of 8
2-8000216-16

Number	Date	Amount
7998	06-16	2,550.00
7999	06-15	361.25
8000	06-20	297.50
8001	06-09	114.75
8002	06-16	255.00
8003	06-16	722.50
8004	06-17	1,275.00
8005	06-20	510.00
8006	06-09	1,020.00
8007	06-15	340.00
8008	06-15	276.25
8009	06-17	977.50
8010	06-09	595.00
8011	06-16	11,538.75
8013 *	06-15	722.50
8014	06-15	3,272.50
8015	06-16	595.00
8017 *	06-13	18,600.00
8018	06-09	531.25
8020 *	06-16	2,975.00
8021	06-16	956.25
8022	06-15	2,890.00
8023	06-09	786.25
8024	06-22	382.50
8025	06-16	5,695.00
8026	06-14	1,615.00
8027	06-14	1,296.25
8028	06-14	1,742.50
8030 *	06-09	1,615.00
8031	06-09	1,785.00
8032	06-17	552.50
8033	06-20	765.00
8034	06-09	595.00
8035	06-20	2,635.00
8036	06-15	255.00
8037	06-09	1,020.00
8038	06-09	552.50
8039	06-15	1,466.25
8040	06-21	85.00
8041	06-14	1,487.50
8042	06-09	255.00

Number	Date	Amount
8050	06-07	21,590.00
8051	06-08	4,500.00
8052	06-08	3,400.00
8053	06-09	425.00
8054	06-22	16,575.04
8055	06-22	1,402.50
8056	06-22	531.25
8057	06-22	2,465.00
8058	06-22	2,125.00
8060 *	06-22	1,190.00
8061	06-20	25,925.00
8062	06-20	382.50
8063	06-22	1,530.00
8064	06-21	2,698.75
8065	06-20	2,868.75
8066	06-17	1,976.25
8067	06-20	4,845.00
8068	06-24	3,400.00
8069	06-21	2,465.00
8070	06-21	1,020.00
8071	06-21	5,673.75
8072	06-27	2,252.50
8073	06-24	1,870.00
8074	06-22	1,147.50
8075	06-22	1,402.50
8076	06-22	212.50
8077	06-23	595.00
8078	06-22	1,020.00
8079	06-24	467.50
8080	06-22	807.50
8081	06-21	340.00
8082	06-23	616.25
8083	06-29	297.50
8084	06-21	340.00
8085	06-23	191.25
8086	06-24	2,213.52
8087	06-23	170.00
8088	06-21	599.45
8090 *	06-23	807.50
8091	06-27	1,062.50
8092	06-24	595.00

ITV00177

**BEVERLY NATIONAL BANK**

EARNING YOUR TRUST SINCE 1802

240 Cabot Street, Beverly, MA 01915 • 978-922-2100 Member FDIC

ITV DIRECT, INC
June 30, 2005Page 6 of 8
2-8000216-16

Number	Date	Amount
8100	06-21	765.00
8101	06-21	212.50
8102	06-22	4,590.00
8103	06-23	63.75
8104	06-23	233.75
8105	06-27	3,591.25
8106	06-20	5,440.00
8107	06-23	1,912.50
8108	06-23	1,126.25
8109	06-22	765.00
8110	06-21	1,466.25
8111	06-27	573.75
8112	06-24	2,210.00
8113	06-23	1,062.50
8114	06-21	1,445.00
8115	06-24	216.75
8116	06-22	8,840.00
8117	06-23	871.25
8118	06-21	31,264.70
8119	06-22	467.50
8120	06-22	616.25
8121	06-20	4,101.25
8122	06-20	5,100.00
8123	06-22	403.75
8124	06-22	2,550.00
8125	06-23	361.25
8126	06-24	297.50
8127	06-23	127.50
8128	06-27	3,102.50
8129	06-27	1,275.00
8130	06-29	510.00
8131	06-22	935.00
8133 *	06-23	18,870.00
8134	06-23	3,931.25
8135	06-22	3,272.50
8136	06-09	3,500.00
8137	06-23	595.00
8138	06-20	9,300.00
8140 *	06-30	488.75
8141	06-21	3,400.00
8142	06-29	680.00

Number	Date	Amount
8151 *	06-24	552.50
8152	06-24	1,062.50
8153	06-22	2,635.00
8154	06-27	255.00
8155	06-22	765.00
8156	06-20	1,466.25
8157	06-27	170.00
8158	06-21	1,020.00
8159	06-29	1,402.50
8160	06-21	361.25
8161	06-27	1,105.00
8162	06-21	680.00
8163	06-23	12,750.00
8164	06-15	36,167.50
8166 *	06-22	2,847.50
8167	06-22	595.00
8168	06-22	32,555.00
8169	06-22	2,252.50
8170	06-22	5,440.00
8171	06-21	6,545.00
8172	06-22	2,677.50
8173	06-22	2,380.00
8174	06-24	276.25
8175	06-23	510.00
8176	06-23	467.50
8179 *	06-23	786.25
8180	06-28	1,190.00
8181	06-27	637.50
8182	06-24	510.00
8183	06-23	340.00
8184	06-22	6,205.00
8185	06-23	1,381.25
8186	06-23	191.25
8187	06-23	382.50
8188	06-24	4,526.25
8189	06-24	3,017.50
8190	06-22	170.00
8191	06-22	3,825.00
8192	06-22	850.00
8193	06-21	5,843.75
8194	06-22	572.75

ITV00178



BEVERLY NATIONAL BANK
EARNING YOUR TRUST SINCE 1802

240 Cabot Street, Beverly, MA 01915 • 978-922-2100 Member FDIC

ITV DIRECT, INC
June 30, 2005

Page 7 of 8
2-8000216-16

Number	Date	Amount
8202	06-22	14,450.00
8203	06-22	7,565.00
8204	06-27	2,443.75
8205	06-21	6,630.00
8206	06-23	3,655.00
8207	06-24	510.00
8208	06-23	340.00
8209	06-29	2,592.50
8210	06-23	361.25
8211	06-27	1,870.00
8212	06-21	680.00
8213	06-23	5,100.00
8214	06-23	3,187.50
8215	06-22	14,182.25
8216	06-20	81,227.50
8217	06-20	72,254.25
8218	06-21	31,705.00
8219	06-28	4,441.25
8220	06-29	1,423.75
8221	06-29	297.50
8222	06-28	20,400.00
8223	06-29	1,232.50
8224	06-29	3,463.75
8225	06-27	4,398.75
8226	06-27	3,485.00
8227	06-28	5,780.00
8228	06-29	5,270.00
8229	06-27	9,605.00
8230	06-27	6,715.00
8231	06-27	8,670.00
8232	06-28	1,572.50
8233	06-29	1,190.00

Number	Date	Amount
8234	06-29	9,435.00
8235	06-29	1,020.00
8238 *	06-29	382.50
8240 *	06-30	1,190.00
8244 *	06-29	318.75
8245	06-28	1,912.50
8246	06-29	12,240.00
8247	06-30	1,317.50
8248	06-30	127.50
8249	06-29	127.50
8250	06-30	9,137.50
8254 *	06-29	2,040.00
8256 *	06-29	2,167.50
8259 *	06-28	24,528.45
8260	06-29	4,398.75
8261	06-29	382.50
8265 *	06-29	2,380.00
8269 *	06-29	531.25
8270	06-30	5,610.00
8272 *	06-30	2,231.25
8279 *	06-29	4,760.00
8281 *	06-30	765.00
8284 *	06-30	1,020.00
8285	06-30	1,870.00
8288 *	06-29	2,082.50
8289	06-24	20,166.25
8290	06-24	56,285.00
8291	06-27	1,360.00
8336 *	06-30	6,630.00
8337	06-30	57,035.00

* Skip in check sequence

DEBITS

Date	Description	Subtractions
06-02	' Service Charge	20.00
	STOP PAY CHARGE	
06-15	' Service Charge	20.00
	STOP PAY CHARGE	
06-16	' Service Charge	20.00

ITV00179

**BEVERLY NATIONAL BANK**

EARNING YOUR TRUST SINCE 1802

240 Cabot Street, Beverly, MA 01915 • 978-922-2100 Member FDIC

ITV DIRECT, INC
June 30, 2005

Page 8 of 8
2-8000216-16

CREDITS

Date	Description	Additions
06-01	' Telephone Transfer	100,000.00
06-02	' Telephone Transfer	60,000.00
06-03	' Deposit	20,400.00
06-06	' Telephone Transfer	200,000.00
06-07	' Deposit	42.50
06-07	' Telephone Transfer	150,000.00
06-08	' Telephone Transfer	100,000.00
06-09	' Telephone Transfer	100,000.00
06-10	' Telephone Transfer	150,000.00
06-14	' Telephone Transfer	135,000.00
06-15	' Telephone Transfer	150,000.00
06-17	' Telephone Transfer	300,000.00
06-21	' Telephone Transfer	215,000.00
06-23	' Telephone Transfer	150,000.00
06-27	' Telephone Transfer	160,000.00
06-30	' Telephone Transfer	125,000.00

DAILY BALANCES

Date	Amount	Date	Amount	Date	Amount
05-31	49,488.22	06-10	349,836.23	06-22	144,255.51
06-01	78,567.62	06-13	273,092.71	06-23	216,076.76
06-02	80,456.08	06-14	274,334.81	06-24	116,578.49
06-03	60,927.33	06-15	232,059.89	06-27	220,393.49
06-06	172,173.08	06-16	183,543.14	06-28	159,888.79
06-07	281,168.23	06-17	472,110.64	06-29	99,645.04
06-08	242,888.48	06-20	237,487.97	06-30	137,222.54
06-09	240,763.73	06-21	331,310.07		

ITV00180

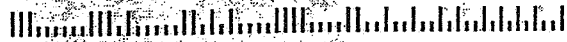
**BEVERLY NATIONAL BANK**

EARNING YOUR TRUST SINCE 1802

240 Cabot Street, Beverly, MA 01915 • 978-922-2100 Member FDIC

Last statement: June 30, 2005
 This statement: July 31, 2005
 Total days in statement period: 31

Page 1 of 5
 2-8000216-16
 (333)



ITV DIRECT, INC
 55 CHERRY HILL DR
 BEVERLY, MA 01915-1053

Direct inquiries to:
 Deposit Operations, 978-922-2100

Beverly National Bank
 240 Cabot Street
 Beverly, MA 01915-4588

SUMMER IS A GREAT TIME TO REVIEW YOUR FINANCIAL PLANNING GOALS. JIM WILLIAMS, V.P./INVESTMENT CONSULTANT CAN HELP YOU BE SURE YOU'RE ON TRACK TO ACHIEVE THEM. CALL JIM AT 978-720-1114 TO SCHEDULE A COMPLIMENTARY, NO-OBLIGATION MEETING. IDENTITY THEFT IS ON THE RISE. LEARN HOW TO PROTECT YOURSELF AND FIND OUT ABOUT IDENTITY THEFTSHEILD(TM) SERVICE. PLEASE SEE THE ENCLOSED PAMPHLET FOR MORE INFORMATION.

Ultimate Bus Success

Account number	2-8000216-16	Beginning balance	\$137,222.54
Enclosures	333	Total additions	1,475,531.25
Low balance	\$33,366.36	Total subtractions	1,579,387.43
		Ending balance	\$33,366.36

CHECKS

Number	Date	Amount
7732	07-05	150.00
7870 *	07-08	722.50
8019 *	07-06	446.25
8029 *	07-05	170.00
8089 *	07-05	619.78
8139 *	07-06	743.75
8150 *	07-05	255.00
8178 *	07-06	850.00
8236 *	07-01	318.75
8237	07-05	297.50

Number	Date	Amount
8255 *	07-05	1,147.50
8257 *	07-01	1,105.00
8258	07-01	2,040.00
8262 *	07-05	63.75
8264 *	07-08	3,973.75
8266 *	07-05	2,550.00
8267	07-08	255.00
8268	07-01	6,991.25
8271 *	07-05	1,785.00
8274 *	07-05	1,827.50

**BEVERLY NATIONAL BANK**

EARNING YOUR TRUST SINCE 1802

240 Cabot Street, Beverly, MA 01915 • 978-922-2100 Member FDIC

ITV DIRECT, INC.
July 31, 2005Page 2 of 5
2-8000216-16

Number	Date	Amount
8287	07-01	25,925.00
8293 *	07-11	16,575.00
8294	07-07	29,000.00
8295	07-07	1,989.00
8296	07-07	6,077.50
8297	07-11	1,181.50
8298	07-07	21,250.00
8299	07-06	49,300.00
8300	07-06	1,317.50
8301	07-06	4,760.00
8302	07-07	2,826.25
8303	07-08	1,785.00
8304	07-07	765.00
8305	07-11	5,976.51
8306	07-13	297.50
8307	07-13	309.89
8308	07-13	1,572.50
8309	07-11	1,912.50
8310	07-13	340.00
8311	07-13	488.75
8312	07-11	255.00
8313	07-08	1,742.50
8314	07-13	21,250.00
8315	07-11	15,632.35
8316	07-13	9,250.00
8317	07-07	42,000.00
8318	07-12	425.00
8319	07-11	4,101.25
8320	07-14	10,500.00
8321	07-18	2,890.00
8323 *	07-08	425.00
8324	07-07	17,000.00
8325	07-11	10,710.00
8327 *	07-07	637.50
8328	07-15	127.50
8329	07-05	2,167.50
8330	07-07	331.50
8331	07-22	255.00
8332	07-13	6,035.00
8333	07-07	680.00
8334	07-25	1,402.50

Number	Date	Amount
8344	07-14	607.75
8345	07-14	34,000.00
8346	07-13	1,232.50
8347	07-12	39,100.00
8348	07-12	318.75
8349	07-15	1,253.75
8350	07-11	1,593.75
8351	07-12	3,655.00
8352	07-11	3,910.00
8353	07-18	2,210.00
8354	07-13	1,955.00
8355	07-13	892.50
8356	07-12	1,955.00
8357	07-12	2,231.25
8358	07-22	2,337.50
8359	07-15	3,400.00
8360	07-13	1,572.50
8361	07-13	1,190.00
8362	07-13	3,145.00
8363	07-14	510.00
8364	07-15	318.75
8365	07-11	5,652.50
8366	07-14	297.50
8367	07-18	382.50
8368	07-13	382.50
8369	07-15	1,992.17
8370	07-14	297.50
8371	07-19	309.89
8372	07-19	85.00
8373	07-13	127.50
8374	07-13	510.00
8375	07-20	382.50
8376	07-15	255.00
8377	07-14	850.00
8378	07-13	722.50
8379	07-12	12,750.00
8380	07-14	6,120.00
8381	07-13	722.50
8382	07-13	127.50
8383	07-12	361.25
8384	07-13	3,145.00

ITV00182

**BEVERLY NATIONAL BANK**

EARNING YOUR TRUST SINCE 1802

240 Cabot Street, Beverly, MA 01915 • 978-922-2100 Member FDIC

ITV DIRECT, INC
July 31, 2005Page 3 of 5
2-8000216-16

Number	Date	Amount
8392	07-15	1,657.50
8393	07-13	212.50
8394	07-22	8,372.50
8395	07-13	786.25
8396	07-12	15,632.35
8397	07-12	16,000.00
8398	07-13	425.00
8399	07-12	3,761.25
8400	07-12	5,270.00
8401	07-13	382.50
8402	07-14	10,500.00
8404 *	07-21	1,636.25
8405	07-13	2,380.00
8406	07-13	850.00
8407	07-14	1,615.00
8408	07-18	1,275.00
8409	07-14	3,187.50
8410	07-13	531.25
8411	07-13	1,105.00
8412	07-15	1,062.50
8413	07-18	382.50
8414	07-11	9,900.00
8415	07-15	233.75
8416	07-13	8,500.00
8417	07-13	5,100.00
8418	07-20	170.00
8419	07-15	403.75
8420	07-13	255.00
8421	07-13	5,355.00
8422	07-14	1,275.00
8423	07-15	1,020.00
8424	07-19	1,211.25
8426 *	07-15	2,401.25
8427	07-15	1,020.00
8428	07-13	221.00
8429	07-14	340.00
8430	07-26	595.00
8431	07-18	2,805.00
8432	07-15	12,750.00
8433	07-13	2,082.50
8434	07-25	282.50

Number	Date	Amount
8442	07-20	4,080.00
8443	07-21	599.25
8444	07-19	15,300.00
8445	07-22	977.50
8446	07-19	29,920.00
8447	07-20	998.75
8448	07-20	1,381.25
8449	07-18	1,593.75
8450	07-18	4,845.00
8451	07-26	2,210.00
8452	07-19	4,250.00
8453	07-18	2,932.50
8454	07-19	1,955.00
8455	07-19	2,231.25
8456	07-26	2,231.25
8457	07-26	3,570.00
8458	07-22	1,572.50
8459	07-22	1,190.00
8460	07-20	3,145.00
8461	07-25	510.00
8462	07-28	1,445.00
8463	07-21	297.50
8465 *	07-26	255.00
8466	07-25	637.50
8467	07-27	1,445.00
8468	07-29	3,060.00
8469	07-21	722.50
8470	07-25	4,250.00
8471	07-21	765.00
8472	07-20	6,120.00
8473	07-22	1,317.50
8474	07-19	127.50
8475	07-28	3,485.00
8476	07-22	3,867.50
8477	07-25	488.75
8478	07-25	1,360.00
8479	07-20	1,147.50
8480	07-25	722.50
8481	07-25	807.50
8482	07-22	722.50
8484 *	07-22	722.50

ITV00183

**BEVERLY NATIONAL BANK**

EARNING YOUR TRUST SINCE 1802

240 Cabot Street, Beverly, MA 01915 • 978-922-2100 Member FDIC

ITV DIRECT, INC
July 31, 2005Page 4 of 5
2-8000216-16

Number	Date	Amount
8493	07-25	2,380.00
8494	07-25	212.50
8495	07-25	1,615.00
8496	07-22	1,275.00
8497	07-27	2,040.00
8498	07-26	5,503.75
8499	07-25	531.25
8500	07-25	1,870.00
8501	07-25	1,062.50
8502	07-25	212.50
8503	07-25	212.50
8504	07-22	1,508.75
8505	07-22	8,500.00
8506	07-21	5,610.00
8507	07-27	170.00
8508	07-27	1,360.00
8509	07-22	4,760.00
8511 *	07-20	1,615.00
8512	07-22	956.25
8514 *	07-21	318.75
8515	07-22	233.75
8516	07-20	3,230.00
8517	07-27	1,020.00
8518	07-21	221.00
8519	07-21	2,040.00
8520	07-25	722.50
8521	07-27	1,105.00
8522	07-21	1,020.00
8523	07-22	1,105.00
8524	07-25	595.00
8525	07-26	2,805.00
8526	07-19	340.00
8527	07-26	13,600.00
8528	07-20	1,381.25
8529	07-28	255.00
8530	07-20	45,368.75
8531	07-15	68,382.50
8532	07-20	382.50
8534 *	07-20	382.50
8535	07-22	1,992.17
8536	07-22	297.50

Number	Date	Amount
8548	07-26	24,650.00
8549	07-27	1,232.50
8550	07-28	5,950.00
8551	07-27	1,997.50
8552	07-26	807.50
8553	07-27	1,615.00
8554	07-27	3,867.50
8557 *	07-26	1,572.50
8558	07-27	1,190.00
8559	07-27	3,145.00
8560	07-29	510.00
8561	07-28	297.50
8562	07-27	255.00
8564 *	07-27	382.50
8565	07-29	1,992.17
8566	07-29	297.50
8567	07-29	1,423.75
8569 *	07-26	510.00
8570	07-28	255.00
8571	07-27	2,550.00
8573 *	07-28	722.50
8574	07-27	6,290.00
8575	07-27	6,120.00
8576	07-26	127.50
8577	07-26	127.50
8578	07-27	170.00
8579	07-28	3,038.75
8580	07-29	2,167.50
8581	07-29	488.75
8582	07-27	850.00
8583	07-29	212.50
8584	07-28	935.00
8585	07-27	510.00
8586	07-27	425.00
8587	07-26	5,015.00
8588	07-27	382.50
8589	07-29	1,168.75
8590	07-28	1,275.00
8591	07-27	1,615.00
8594 *	07-27	5,525.00
8595	07-27	531.25

ITV00184

**BEVERLY NATIONAL BANK**

EARNING YOUR TRUST SINCE 1802

240 Cabot Street, Beverly, MA 01915 • 978-922-2100 Member FDIC

ITV DIRECT, INC
July 31, 2005Page 5 of 5
2-8000216-16

Number	Date	Amount
8606 *	07-27	318.75
8607	07-29	573.75
8608	07-27	1,933.75
8609	07-27	765.00
8612 *	07-28	1,020.00
8616 *	07-26	722.50

Number	Date	Amount
8617	07-28	11,475.00
8618	07-27	1,381.25
8619	07-28	34,140.25
8620	07-22	53,167.50
8621	07-27	1,423.75

* Skip in check sequence

DEBITS

Date	Description	Subtractions
07-21	Telephone Transfer	150,000.00

CREDITS

Date	Description	Additions
07-01	Telephone Transfer	125,000.00
07-06	Telephone Transfer	175,000.00
07-08	Telephone Transfer	225,000.00
07-13	Telephone Transfer	200,000.00
07-15	Telephone Transfer	150,000.00
07-18	Telephone Transfer	100,000.00
07-21	Deposit	531.25
07-21	Telephone Transfer	150,000.00
07-22	Telephone Transfer	75,000.00
07-25	Telephone Transfer	100,000.00
07-26	Telephone Transfer	100,000.00
07-28	Telephone Transfer	75,000.00

DAILY BALANCES

Date	Amount	Date	Amount	Date	Amount
06-30	137,222.54	07-12	138,458.30	07-21	82,312.35
07-01	217,363.79	07-13	216,243.66	07-22	43,956.58
07-05	195,344.01	07-14	137,239.66	07-25	92,144.08
07-06	294,269.01	07-15	189,771.24	07-26	127,841.58
07-07	171,606.01	07-18	269,753.74	07-27	43,692.53
07-08	386,151.01	07-19	170,023.85	07-28	46,897.28
07-11	251,418.15	07-20	97,518.85	07-29	33,366.36

**BEVERLY NATIONAL BANK**

EARNING YOUR TRUST SINCE 1802

240 Cabot Street, Beverly, MA 01915 • 978-922-2100 Member FDIC

Last statement: July 31, 2005
 This statement: August 31, 2005
 Total days in statement period: 31

Page 1 of 2
 2-8000216-16
 (22)

|||||

ITV DIRECT, INC
 55 CHERRY HILL DR
 BEVERLY MA 01915-1053

Direct inquiries to:
 Deposit Operations, 978.922-2100

Beverly National Bank
 240 Cabot Street
 Beverly, MA 01915-4588

SUMMER IS A GREAT TIME TO REVIEW YOUR FINANCIAL PLANNING GOALS. JIM WILLIAMS, V.P./INVESTMENT CONSULTANT CAN HELP YOU BE SURE YOU'RE ON TRACK TO ACHIEVE THEM. CALL JIM AT 978-720-1114 TO SCHEDULE A COMPLIMENTARY, NO-OBLIGATION MEETING. IDENTITY THEFT IS ON THE RISE. LEARN HOW TO PROTECT YOURSELF AND FIND OUT ABOUT IDENTITY THEFTSHIELD(TM) SERVICE. PLEASE SEE THE ENCLOSED PAMPHLET FOR MORE INFORMATION.

Ultimate Bus Success

Account number	2-8000216-16	Beginning balance	\$33,366.36
Enclosures	22	Total additions	110,000.00
Low balance	\$-84,526.03	Total subtractions	135,759.23
		Ending balance	\$7,607.13

CHECKS

Number	Date	Amount
8263	08-08	765.00
8322 *	08-09	2,975.00
8483 *	08-01	6,290.00
8510 *	08-03	1,275.00
8513 *	08-02	1,211.25
8533 *	08-02	722.50
8537 *	08-01	309.89
8555 *	08-01	2,337.50
8556	08-01	3,400.00
8563 *	08-02	340.00

Number	Date	Amount
8592 *	08-01	1,275.00
8593	08-02	2,635.00
8600 *	08-24	403.75
8603 *	08-03	1,275.00
8605 *	08-02	658.75
8610 *	08-01	212.50
8611	08-03	425.00
8613 *	08-01	2,550.00
8614	08-02	595.00
8615	08-01	2,805.00

**BEVERLY NATIONAL BANK**

EARNING YOUR TRUST SINCE 1802

240 Cabot Street, Beverly, MA 01915 • 978-922-2100 Member FDIC

ITV DIRECT, INC.
August 31, 2005Page 2 of 2
2-8000216-16

Date	Description	Subtractions
08-31	Maintenance Fee	4.34

CREDITS

Date	Description	Additions
08-01	Telephone Transfer	10,000.00
08-03	Telephone Transfer	100,000.00

DAILY BALANCES

Date	Amount	Date	Amount	Date	Amount
07-31	33,366.36	08-03	12,498.97	08-19	8,015.22
08-01	21,636.47	08-08	11,733.97	08-24	7,611.47
08-02	-84,526.03	08-09	8,758.97	08-31	7,607.13

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CAPPSEALS, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
DIRECT MARKETING CONCEPTS, INC.,)	
ITV DIRECT, INC., DIRECT	)	C.A. No. 05-11907-JLT
FULFILLMENT, LLC, DONALD)	
BARRETT, and ROBERT MAIHOS,)	
)	
Defendants.)	
)	

**AFFIDAVIT OF SCOTT SILVERMAN IN SUPPORT OF CAPPSEALS INC.'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

EXHIBIT K

8/23/2004 Barrett, Donald

VOLUME: I
 PAGES: 141
 EXHIBITS: 33 - 36

UNITED STATES DISTRICT COURT
 DISTRICT OF MASSACHUSETTS

ITV DIRECT, INC.

Plaintiff

CIVIL ACTION

Vs.

NO. 04-CV-10421-JLT

HEALTHY SOLUTIONS, LLC, ET AL

Defendants

AND RELATED ACTIONS

DEPOSITION OF DONALD BARRETT

taken on behalf of the Defendants pursuant to the
 Federal Rules of Civil Procedure, before Carole M.
 Wallace, Certified Shorthand Reporter and Notary Public,
 at the offices of Posternak, Blankstein & Lund, LLP, 800
 Boylston Street, Boston, Massachusetts 02210, on
 Monday, August 23, 2004, commencing at 9:58 a.m.

HENNESSEY CORP. D/B/A ROBERT H. LANGE CO.

50 Congress Street - Boston, Massachusetts 02109

Tel: (617) 523-1874

Fax: (617) 523-7343

8/2/2005 4:20 PM

1

8/23/2004 Barrett, Donald

I N D E X

Witness	Direct	Cross	Redirect	Recross
DONALD BARRETT	5	137		

* * * *

E X H I B I T S

No.	Description	Ident.
33	Answer and Crosscomplaint of	24
	Direct Marketing Concepts	
34	Affidavit of Donald Barrett	26
35	Bates No. ITV 288 - 290, ITV 395 . . .	119
36	Fax and transcript of final version .	131
	done 9/10/03	

8/2/2005 4:20 PM

3

8/23/2004 Barrett, Donald

APPEARANCES;

Peter S. Brooks, Esq.
 Seyfarth Shaw LLP
 Two Seaport Lane
 Boston, Massachusetts 02210
 617 946-4800
 On behalf of the Plaintiff

Michael Sciucco, Esq.
 100 Cummings Center
 Suite 506E
 Beverly, Massachusetts 01915
 978 299-2553
 On behalf of the Plaintiff
 Becky V. Christensen, Esq.
 Levin & O'Connor
 384 Forest Avenue - Suite 13
 Laguna Beach, California 92651
 949 497-7676
 On behalf of the Defendants

VIDEOGRAPHER:
 Stephen Hartman, CLVS
 Hennessey Corp. d/b/a Robert H. Lange Co.
 50 Congress Street
 Boston, Massachusetts 02109

ATTORNEY CHRISTENSEN RETAINED THE ORIGINAL EXHIBITS

8/2/2005 4:20 PM

2

8/23/2004 Barrett, Donald

THE VIDEOGRAPHER: We are now recording
 and on the record. My name is Stephen Hartman, a
 Certified Legal Video Specialist for Hennessey
 Corp., DBA Robert H. Lange Co. Our business address
 is Fifty Congress Street, Suite 525, Boston,
 Massachusetts 02109. Today is August 23, 2004.
 The time is 9:58.

This is the deposition of Donald Barrett
 in the matter of ITV, Direct, Plaintiff Vs. Healthy
 Solutions, LLC et al, Defendants and Related Cases
 in the United States District Court, District of
 Massachusetts, case number 04-CV-10421-JLT. This
 deposition is being taken at 800 Boylston Street,
 Boston, Massachusetts on behalf of the defendants.
 The court reporter is Carole Wallace.

Will counsel please state their
 appearances and the court reporter will administer
 the oath.

MS. CHRISTENSEN: Becky Christensen of
 Levin & O'Connor for defendants Healthy Solutions
 LLC, Health Solutions, Inc., Alejandro Guerrero,
 Greg Geremesz and Michael Howell.

MR. BROOKS: I'm Peter Brooks and I
 represent ITV and Direct Marketing Concepts.

8/2/2005 4:20 PM

4

8/23/2004 Barrett, Donald

1 DONALD BARRETT,
2 having been satisfactorily identified by the
3 production of his driver's license and duly sworn by
4 the Notary Public, was examined and testified as
5 follows:
6 DIRECT EXAMINATION BY MS. CHRISTENSEN
7 Q Please state your full legal name.
8 A Full legal name is Donald William Barrett, Jr.
9 Q What is your home address?
10 A It is Nine Tall Tree Drive Beverly, Massachusetts
11 01905.
12 Q Have you ever had your deposition taken before?
13 A Yes.
14 Q How many times, approximately?
15 A I can't -- Approximately three or four times.
16 Q You understand that you are giving testimony under
17 oath today, is that right?
18 A Yes.
19 Q Even though we are in a conference room, it would be
20 the same as if you were in a courtroom?
21 A Absolutely.
22 Q Is there any reason that you can't give your very
23 best testimony today?
24 A No, I can give my very best testimony today.

8/2/2005 4:20 PM

5

8/23/2004 Barrett, Donald

1 Q Please tell me whether you are employed.
2 A Yes, I am employed.
3 Q What do you do?
4 A I own a company called ITV Direct and Direct
5 Marketing Concepts along with my business partner.
6 Q What do you do for ITV Direct?
7 A I host the infomercial aspect of the direct response
8 business.
9 Q Do you have any title for your work at ITV Direct?
10 A My title is president and CEO.
11 Q Are you a shareholder?
12 A Yes, I am.
13 Q What percentage of the shares do you own?
14 A I believe fifty percent.
15 Q You mentioned a business partner. Who is that?
16 A His name is Robert Maihos, M A I H O S.
17 Q What percentage of shares does he own?
18 A The other fifty percent.
19 Q What about Direct Marketing Concepts, what do you do
20 for them?
21 A The same thing.
22 Q What you say "the same thing," would you describe
23 your duties for me.
24 A The Direct Marketing Concepts was the original

8/2/2005 4:20 PM

6

8/23/2004 Barrett, Donald

1 company that we started. ITV Direct was a company
2 that I started to actually produce the infomercials.
3 Direct Marketing Concepts doesn't produce the
4 infomercials any more, they are mainly the company
5 that answers the telephones.
6 Q Do you have a title at Direct Marketing Concepts?
7 A It would be the same, president and CEO.
8 Q Do you own some shares in Direct Marketing Concepts?
9 A Exact same as Direct Marketing Concepts. Same as
10 ITV Direct, rather.
11 Q So that would be fifty percent ownership for you and
12 fifty percent for Mr. Maihos?
13 A Correct.
14 Q You mentioned that you were the host for the
15 infomercials. Do you have any operational
16 responsibilities?
17 A I do, but I really don't pay attention to the
18 day-to-day operations.
19 Q Do you have general oversight duties?
20 A Yes, I oversee things.
21 Q Describe for me if you would for ITV Direct the
22 ultimate decision making authority as a general
23 proposition.
24 A Explain the question.

8/2/2005 4:20 PM

7

8/23/2004 Barrett, Donald

1 Q Ultimately who makes the decisions for ITV Direct,
2 Inc.?
3 A Ultimately me and my partner, Robert Maihos.
4 Q How about for Direct Marketing Concepts?
5 A That would be the same.
6 Q You mentioned a moment ago that Direct Marketing
7 Concepts was the first of the two companies?
8 A Correct.
9 Q Would you describe for me when it was founded and
10 how it was built.
11 A How it was built?
12 Q Why don't we start with when it was founded.
13 A I think it was started in 2002. I'm not a hundred
14 percent sure. Around that time period. And it was
15 started out of my mom's house. I had six telephones
16 in a garage. There was a little room over the
17 garage and I had six telephones and that's where I
18 started the company.
19 Q Did you start in the infomercial business or what
20 were you selling?
21 A Yes, I started in the infomercial business and
22 although I wasn't producing shows at the time, I
23 would get shows from other companies, put my 800
24 number on their shows, buy the product from them

8/2/2005 4:20 PM

8

8/23/2004 Barrett, Donald

1 wholesale and they would let me use their
 2 infomercial per se. And I could make those
 3 infomercial work because I didn't have any overhead
 4 so to say. I worked out of mom's house, I bought my
 5 own media, I answered my own phone calls, so I could
 6 make shows work that frankly other people couldn't
 7 make work.
 8 Q What was your first product, do you remember?
 9 A The first product -- And we didn't produce the first
 10 shows. The first show was a program called
 11 Dr. Mortar's Dynamic Health. It was a tape series.
 12 Q What kind of product was that?
 13 A Audio tape series.
 14 Q What other products were you selling from Direct
 15 Marketing Concepts in the beginning?
 16 A Ultra Body Toddy.
 17 Q What was that?
 18 A That was a nutritional product. It was 300
 19 nutrients in it. It was the Ultra Body Toddy. The
 20 name pretty much says it all. It has everything in
 21 it.
 22 Q Who created that nutritional supplement?
 23 A A could company Supra Life out of San Diego,
 24 California. Supra Life. I'm not sure if they are

8/2/2005 4:20 PM

9

8/23/2004 Barrett, Donald

1 still in business.
 2 Q Who was the owner of Supra Life, if you recall?
 3 A I don't know. The president's name was Mike Lewis,
 4 and I'm not sure who owned the company.
 5 Q What other products do you recall from the beginning
 6 of Direct Marketing Concepts?
 7 A Those are the basic products that we started with.
 8 I ran the Dr. Mortar show for the first year or two.
 9 Q You mentioned at that time that you did not actually
 10 produce the infomercials yourself. When, if ever,
 11 did Direct Marketing Concepts begin to produce
 12 infomercials itself?
 13 A I believe the very first show I did was with Alex
 14 Guerrero, the very first show I produced.
 15 Q I want to make sure I understand this. ITV Direct
 16 essentially produces the infomercials, and Direct
 17 Marketing Concepts answers the phone, places the
 18 orders, that sort of thing, is that a fair
 19 statement?
 20 A I really came up with ITV Direct because I liked the
 21 name more. I kind of weaseled, not weaseled but
 22 said ITV Direct, we can use that it for the
 23 production end of it and we'll use Directing
 24 Marketing Concepts for the back end of the business.

8/2/2005 4:20 PM

10

8/23/2004 Barrett, Donald

1 I liked the ITV name. It incorporated TV. I just
 2 liked the name better. That's frankly why I did it.
 3 Q When did you form ITV Direct, Inc., if you recall?
 4 A 2003, maybe. 2003, yes, it's 2004 now.
 5 Q You mentioned that the first show that you produced
 6 was probably the Supreme Greens infomercial, is that
 7 right?
 8 A Yes, probably.
 9 Q So was the --
 10 A I think it was the very first show.
 11 Q Was the studio and the equipment in that for filming
 12 the infomercials, was all that new at that time?
 13 A It was new, but we rented some of it. We didn't own
 14 all the equipment, and I'm not sure we own all of it
 15 to this day. But we rented some of the equipment
 16 and we had the studio location at that time, yes.
 17 Q Do you know a person by the name of Ted Reed?
 18 A Yes.
 19 Q Who is Ted Reed?
 20 A Ted Reed is someone that we hired to do our, produce
 21 or infomercials. I originally met him when I was
 22 doing Direct Marketing Concepts, and he also had a
 23 business within the Cummings Center which is the
 24 building that I'm in. It has 500 different

8/2/2005 4:20 PM

11

8/23/2004 Barrett, Donald

1 businesses. And Ted Reed was with a company called
 2 Counter Productions. I went over to him and asked
 3 him if he would be interested in producing, helping
 4 me produce infomercials because he had experience,
 5 alleged experience in the industry.
 6 Q So is he an employee of ITV Direct?
 7 A Not at first.
 8 Q Was it originally a contract kind of arrangement?
 9 A Originally he had his own company, and I just paid
 10 him for the project, like I just paid him like a
 11 1099. He had his own company. I hired his company
 12 to do the show. Then when it became apparent that
 13 the only business he had was us, I said, Ted, why
 14 don't we take over your company's expenses and you
 15 work for our company.
 16 Q When did that change occur, do you recall?
 17 A I would think right around the time when I did the
 18 show with Alex Guerrero because that is when we
 19 started producing our own infomercials.
 20 Q Does he still work for you?
 21 A No.
 22 Q When did he leave your employ?
 23 A Well, about six months ago I started doing a lot of
 24 filming down in Universal Studios, Florida, when I

8/2/2005 4:20 PM

12

8/23/2004 Barrett, Donald

1 was working with a company called Ideal Health which
 2 I'm sure we'll get into. They had a studio call UIX
 3 Studios in Universal, Florida, and it was a much
 4 nicer studio. And we can do a lot, better
 5 production, more protection value out of the studio
 6 than we could out of our little studio in Beverly.
 7 So I basically told Ted, I remember we severed our
 8 relationship. It was the beginning of the year.
 9 Q 2004?
 10 A Beginning of this year. I said come this year,
 11 because it was a tremendous amount of overhead. I'm
 12 not the numbers guy of the business, but Bob told me
 13 it cost about a half million dollars to operate the
 14 studio, and I thought it was extremely high. So we
 15 decided just to do our shows at Universal Studios.
 16 Q So Mr. Reed then --
 17 A -- went back to his own company.
 18 Q Is the name of it Counter Productions?
 19 A Yes.
 20 Q So you built the business from six telephones in the
 21 garage, and how large is ITV Direct now?
 22 A We have about 200 employees give or takes.
 23 Q Is that ITV Direct, or is that Direct Marketing
 24 Concepts?

8/2/2005 4:20 PM

13

8/23/2004 Barrett, Donald

1 A Both. I'm not sure which. I think everyone is paid
 2 out of Direct Marketing Concepts.
 3 Q Of that 200, can you give me a sense of roughly how
 4 many of those are people who answer the telephones
 5 in the call center?
 6 A I would say about 170 of them answer the telephones;
 7 based on the 200, I would say 170 answer the phones.
 8 Q Give me an idea what the other thirty people do by
 9 position or department, what is more convenient for
 10 you?
 11 A We have media buyers, about five media buyers, we
 12 have, who answer the phones. Product fulfillment,
 13 so we have probably 15 people in fulfillment, and
 14 the rest are management.
 15 Q When you say "product fulfillment," what does that
 16 include?
 17 A Shipping the product.
 18 Q Does that include ordering as well?
 19 A No.
 20 Q Who handles the product ordering?
 21 A Eileen Barrett which is now Eileen Maihos. She
 22 married my partner Bob which is a whole other
 23 deposition.
 24 Q Eileen Barrett Maihos -- I'm sorry, how do you say

8/2/2005 4:20 PM

14

8/23/2004 Barrett, Donald

1 the last name?
 2 A Maihos, M I A -- M A I H O S.
 3 Q Eileen Barrett Maihos is your sister?
 4 A Correct.
 5 Q And she is now the wife of your partner, Robert
 6 Maihos?
 7 A Correct.
 8 Q We've talked about product fulfillment and media and
 9 the call center and your sister Eileen Barrett
 10 Maihos with product ordering. Is there any other
 11 significant divisions there in the company?
 12 A Divisions?
 13 Q Or departments.
 14 A Return department. We have a customer service, but
 15 I incorporated the customer service because those
 16 are the people who answer the telephones when I was
 17 giving you the number. We have customer service
 18 people. That's it.
 19 Q How does -- Is customer service separate from people
 20 who answer the telephones?
 21 A It's in a separate location, yes.
 22 Q What is it they do as opposed to taking orders?
 23 A They handle -- Well, they do take some orders
 24 because some have built up a clientele or built up a

8/2/2005 4:20 PM

15

8/23/2004 Barrett, Donald

1 rapport with our customers, but they do sell some
 2 product but mostly it's canceling orders if people
 3 want to freeze their order or whatever the case may
 4 be, they handle all the different aspects of
 5 customer service. Kathy Radcliffe is the manager of
 6 that department. She handles all the day-to-day
 7 operations there. I'm hardly ever there.
 8 Q They were included in the 170 number with the call
 9 center?
 10 A Yes.
 11 Q Just give me a rough idea how many customer service
 12 folks there are.
 13 A I'd say twenty.
 14 Q About twenty. Do you have an accounting department?
 15 A Not a department. We have someone that writes the
 16 checks, and we have a CPA who overlooks that.
 17 Q Who is the CPA?
 18 A Wayne Callahan and Leo Bonarigo.
 19 Q Can you spell that for me?
 20 A I can't.
 21 Q Mr. Bonarigo is also a CPA?
 22 A Mr. Bonarigo is the CPA. Wayne works for him. We
 23 hired their firm to do our books, I guess.
 24 Q So Mr. Callahan and Mr. Bonarigo are not direct

8/2/2005 4:20 PM

16

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CAPPSEALS, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
DIRECT MARKETING CONCEPTS, INC.,)	
ITV DIRECT, INC., DIRECT	)	C.A. No. 05-11907-JLT
FULFILLMENT, LLC, DONALD)	
BARRETT, and ROBERT MAIHOS,)	
)	
Defendants.)	
)	

**AFFIDAVIT OF SCOTT SILVERMAN IN SUPPORT OF CAPPSEALS INC.'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

EXHIBIT L

RECEIPT # 167088
 AMOUNT \$ 258
 SUMMONS ISSUED Y-1
 LOCAL RULE 4.1
 WAIVER FORM
 MCF ISSUED
 BY DPTY. CLK.
 DATE 9-23-05

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DIRECT MARKETING CONCEPTS, INC.,
ITV DIRECT, INC., and DONALD BARRETT,

Plaintiffs,

vs.

THE FEDERAL TRADE COMMISSION,
an agency of the federal government,

Defendant.

Civil Action No.

05 - 11930 GAO

MAGISTRATE JUDGE *Bowles*

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, Direct Marketing Concepts, Inc., ITV Direct, Inc. and Donald Barrett

(collectively "Plaintiffs"), through their undersigned counsel, allege as follows:

INTRODUCTION

1. Plaintiffs bring this action against the Federal Trade Commission ("Defendant," "FTC," or "Commission") for declaratory and injunctive relief and damages under: (a) the First and Fifth Amendments to the United States Constitution; and (b) the Administrative Procedures Act ("APA"). Plaintiffs' rights are being infringed by final agency action undertaken by Defendant, including Defendant's interpretation and implementation of the Federal Trade Commission Act (the "FTC Act") in a manner that violates due process, equal protection under the law, and unlawfully restrains Plaintiffs commercial speech. Specifically, the FTC is engaged in a concerted effort to damage Plaintiffs and suppress and restrain the Plaintiffs' constitutionally protected commercial speech by applying an undefined and arbitrary standard to that speech in violation of the Fifth Amendment and the APA. The FTC is applying its standards unequally, because it specifically has targeted Plaintiffs for enforcement – while allowing other entities

making similar claims to continue their advertising – in an effort to shut down Plaintiffs’ operations by any means possible, in clear violation of Plaintiffs’ civil rights. Upon information and belief, the FTC’s actions are motivated in part by Mr. Barrett’s public criticisms of the FTC and its procedures, including his comments in several advertisements that the FTC is supporting conventional drug companies, while penalizing companies that advertise alternative remedies and dietary supplements. In its zeal to shut down Mr. Barrett and his companies, the FTC has ignored its own procedures for reviewing commercial speech in favor of seeking an outright ban on any speech by the Plaintiffs in violation of the First Amendment.

THE PARTIES

2. The plaintiff, Direct Marketing Concepts, Inc. (“DMC”), is a Massachusetts corporation with a principal place of business at 55 Cherry Hill Drive, Beverly, Massachusetts.

3. The plaintiff, ITV Direct, Inc. (“ITV”), is a Massachusetts corporation with a principal place of business at 55 Cherry Hill Drive, Beverly, Massachusetts.

4. The plaintiff, Donald Barrett is a citizen of Massachusetts with a principal residence in Beverly, Massachusetts. Mr. Barrett is the President and owner of DMC and ITV.

5. Defendant, the Federal Trade Commission, is an agency of the federal government, created by Congress and operated under the Federal Trade Commission Act (15 U.S.C. § 41 *et seq.*). Defendant’s principal place of business is located on Northwest Pennsylvania Avenue at 6th Street, in Washington, D.C.

JURISDICTION, VENUE AND STANDING

6. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because federal questions are raised under 5 U.S.C. § 704, and the Declaratory Judgment Act, 26 U.S.C. § 2201, as well as the First and Fifth Amendments to the United States Constitution.

7. Venue is proper in the District of Massachusetts pursuant to 28 U.S.C. § 1391(e).

8. Plaintiff has standing to bring this action because (a) Defendant's unlawful interpretation and implementation of Sections 5 and 12 of the FTC Act have unduly burdened and until enjoined will continue to unduly burden Plaintiffs' rights of due process and free speech; (b) Defendant has engaged and is continuing to engage in a pattern of conduct under Defendant's unlawful interpretation and implementation of Sections 5 and 12 of the FTC Act in order to unfairly damage Plaintiffs and suppress Plaintiffs' protected speech; (c) Defendant's attempt to evade its own procedures for enforcement of the FTC Act constitutes a denial of Plaintiffs' right to due process; and (d) Plaintiff is uncertain about its rights and obligations under Sections 5 and 12 of the FTC Act necessitating declaratory relief to vindicate Plaintiffs' rights and avoid prosecution of Plaintiffs exercise of a fundamental liberty, while providing certainty to Plaintiff and other advertisers under Sections 5 and 12 of the FTC Act.

9. Defendant's requirement of compliance with an incomprehensible, so-called "competent and reliable scientific evidence" standard before a dietary supplement claim can be advertised constitutes final agency action under Sections 5 and 12 of the FTC Act. Defendant's requirement is a definitive statement of Commission policy by which the rights and obligations of advertisers, including Plaintiffs, are determined, and from which legal consequences flow. Defendant bases its law enforcement actions on its vague standard, treats its vague standard as controlling, submits this standard to courts in support of equitable relief, refuses to engage in rulemaking to elaborate its standard, expects compliance with its vague standard, refuses to change how its vague standard is implemented, and takes coercive action against advertisers that make product claims in commercial speech the Defendant alleges do not meet this standard.

10. Defendant's unconstitutionally vague regulatory approach governing dietary supplement claims is unlawful and is ripe for adjudication. This action presents substantial, threshold questions of law pertaining to the validity of Defendant's actions against Plaintiffs and

continuing efforts to circumvent Plaintiffs' due process and First Amendment rights. Plaintiffs challenge Defendant's opinion of its own powers and the propriety of its coercive tactics to compel advertisers, including Plaintiffs, to comply with the federal government's view of protected commercial speech under the First Amendment. These actions are not occurring in the abstract, but exist in the context of a real and concrete controversy relating to Plaintiffs' current advertisements.

11. Defendant's selective enforcement of its vague standard to directly target Mr. Barrett and his companies for engaging in protected speech and criticizing the FTC is damaging and continues to damage Plaintiffs' liberty and property.

GENERAL ALLEGATIONS

12. Plaintiffs' business is to advertise and sell various consumer products, including dietary supplements, through television advertisements. Among other products, Plaintiffs sell a popular dietary supplement known as "Sea Vegg™" as well as a supplement known as "Flex Protex™." Advertisements for Sea Vegg™ discuss the positive health benefits of seaweed and sea vegetation. While not making any direct curative claims, during the advertisement the subjects of diabetes, fibromyalgia, arthritis and cancer, among other topics, are discussed. Advertisements for Flex Protex™ similarly do not make any direct curative claims, but do discuss the possible benefits of the products' ingredients in connection with joint pain and cartilage damage, as well as inflammation and arthritis.

13. Plaintiffs market and sell Sea Vegg™ and Flex Protex™ for use in conjunction with proper diet and exercise, and an overall healthy lifestyle. Plaintiffs do not suggest that Sea Vegg™ or Flex Protex™ should completely replace traditional medication and do not suggest that consumers should refrain from consulting with their doctors or other medical professionals, nor is it suggested that traditional drugs or other medications are ineffective. These are central

themes of Plaintiffs' advertisements for Sea VeggTM and Flex ProtexTM. In addition, the Sea VeggTM and Flex ProtexTM advertising expressly disclaims that the product is designed to treat, prevent or cure any disease, but rather may help in increasing overall health and lowering the risks of certain diseases or symptoms through a healthy diet.

14. Sea VeggTM has become one of the leading supplement products in the United States and maintains a loyal customer base that continues to order the product. Flex ProtexTM has been sold by a publicly traded nutrition company, Nutracea, for many years. Nutracea has spent many years and millions of dollars developing their products and conducting studies and research in connection with their products' ingredients. Numerous customers have telephoned or written to the Plaintiffs to state that the Plaintiffs' products have substantially benefited them in leading a healthier lifestyle.

15. Attached as Exhibits 1 is the Declaration of Stefan Kraan. Dr. Kraan is a Phycologist at the Martin Ryan Institute, National University of Ireland and is a leading researcher in the area of sea vegetation. Dr. Kraan has spent his career reviewing the vast amounts of scientific literature regarding the ingredients contained within Sea VeggTM, the health benefits of these ingredients, and the claims made by Plaintiffs in their advertisements concerning the product. Dr. Kraan has concluded that sea vegetation in general and Sea VeggTM in particular has vast and wide-ranging health benefits, including in the treatment of degenerative diseases, including cancer. These conclusions are supported by volumes of published scientific literature available in academic publications, the National Institutes of Health, the National Library of Medicine and other leading medical journals.

16. As set forth in the attached Declarations by Dr. Kraan, as well as the scientific literature and studies, the statements set forth in the advertising for Sea VeggTM are not false, misleading or deceptive, and are substantiated by clinical studies and scientific literature.

17. Likewise, prior to running any advertising for Flex Protex™, Plaintiffs discussed the product in detail with the scientific personnel at Nutracea, including two Ph.D.'s on staff, and obtained a vast amount of scientific literature concerning the product and its ingredients, including several double-blind studies and similar materials, demonstrating the effectiveness of the active ingredients in the product. Plaintiffs rely on experienced personnel, including doctors and medical experts, to search the scientific and medical literature for ingredients that have been tested, studied, and observed to be safe and to produce positive effects upon the health and well being of consumers.

18. All of Plaintiffs advertising is subject to thorough review procedures that ensure that the advertising is supported by significant scientific literature. This literature is maintained by Plaintiffs and is available for review upon request by any government official, including the staff of the FTC. Plaintiffs invest substantial sums to continually investigate, locate, and select supplements that have the best possible scientific support. In addition Plaintiffs and their manufacturers invest substantial sums to assure that its products are manufactured to very high standards so that its products meet or exceed the quality and other characteristics of the compounds identified in the scientific literature, which support the products' efficacy. For example, the manufacturer of Flex Protex™ has spent millions of dollars developing and testing their products. Quality control is of critical importance to Plaintiffs.

19. Plaintiffs are so confident in their products that for *every* product they bring to market and develop, a 100% money-back guarantee is offered to every consumer. All a consumer need do if dissatisfied with the product for any reason is to return the unused portion within 90 days for a full refund. Plaintiffs always honor and fulfill their 100% money-back guarantee.

20. The Sea Vegg™ and Flex Protex™ advertisements and all related claims for Sea Vegg™ and Flex Protex™ are not false or misleading. Plaintiff possessed a reasonable basis for making its product claims at the time they were made and it continues to review scientific sources for further substantiation. Plaintiffs have consulted with a number of medical experts and doctors, who support the health benefits of each of these products.

21. As confirmed by Dr. Kraan and other doctors consulted by ITV, scientific literature available to the public and the government adequately substantiates Plaintiffs' product claims for Sea Vegg™. As confirmed by the vast amount of scientific literature compiled in connection with Flex Protex™, including double-blind clinical studies, the advertising for Flex Protex™ is fully substantiated.

22. Congress has published the following findings of fact concerning dietary supplements:

2. the importance of nutrition and the benefits of dietary supplements to health promotion and disease prevention have been documented increasingly in scientific studies;
- 3(A). there is a link between the ingestion of certain nutrients or dietary supplements and the prevention of chronic diseases such as cancer, heart disease and osteoporosis;
5. preventative health measures, including education, good nutrition, and appropriate use of safe nutritional supplements will limit the incidence of chronic diseases, and reduce long-term health care expenditures;
7. there is a growing need for emphasis on the dissemination of information linking nutrition and long-term good health;
8. consumers should be empowered to make choices about preventive health care programs based on data from scientific studies of health benefits related to particular dietary supplements;
12. the nutritional supplement industry is an integral part of the economy of the United States;
13. although the Federal Government should take swift action against products that are unsafe or adulterated, the Federal Government should not take any actions to impose unreasonable regulatory barriers limiting or slowing the flow of safe products and accurate information to consumers ...

14. dietary supplements are safe within a broad range of intake, and safety problems with the supplements are relatively rare; and

15(B). a rational Federal framework must be established to supersede the current *ad hoc* patchwork regulatory policy on dietary supplements.

21 U.S.C.A. § 321, at p.169, Congressional Finding Nos. 2, 3(A), 5, 7, 8, 12, 13, 14, and 15(B).

23. Notwithstanding the foregoing, the FTC has undertaken numerous efforts to shut down the operations of Plaintiffs and suppress completely their commercial speech concerning dietary supplements. In May 2004, the FTC filed a lawsuit in federal court in Massachusetts related to two prior advertisements aired by Plaintiffs. These advertisements are entirely unrelated to the Sea Vegg™ and Flex Protex™ advertisements. The Sea Vegg™ and Flex Protex™ advertising was not filmed, nor had it aired, at the time the FTC brought its lawsuit against Plaintiffs.

24. Before the FTC's lawsuit was filed, Plaintiffs had agreed to cease running both of the subject advertisements and had requested that the FTC meet with them to discuss any issues the FTC staff had with the claims made in those advertisements. Plaintiffs explained to the FTC that it wished to better understand why the claims were problematic so that Plaintiffs' future advertising would not run afoul of the FTC's vague and undefined standards. The FTC refused such a meeting, opting instead to seek immediately to shut down Plaintiffs' operations, put hundreds of employees out of work, and completely prevent any future commercial speech through an asset freeze and the appointment of a receiver.

25. In connection with its original lawsuit, the FTC's request for a receiver and asset freeze was denied. In subsequent conversations with the FTC staff, they have admitted that they were extremely disappointed with the Court's decision and believed that Plaintiffs, and particularly Mr. Barrett, should be prohibited entirely from airing any further advertising for dietary supplements. Since the denial of the FTC's request, the FTC staff have continued to

monitor the Plaintiffs' advertising, seeking any opportunity to completely suppress any further speech by Plaintiffs by whatever means possible. These selective enforcement efforts have resulted in numerous contacts with third-party vendors, including banks and credit card companies, dozens of anonymous calls to Plaintiffs' call center, and coordination and communication with an ostensibly "independent" trade association, leading to the expulsion of the Plaintiffs from that association for refusing to cease its advertising of the Sea Vegg™ advertisements.

26. Despite the fact that the Sea Vegg™ advertising was running for several months, the FTC did not contact Plaintiffs directly to raise any concerns with the advertising. The FTC likewise never requested that Plaintiffs provide the wealth of substantiation in their possession for review in accordance with their regular procedures and policies. Similarly, the FTC never directly contacted Plaintiffs concerning the Flex Protex™ advertisements or sought substantiation for that advertising.

27. In addition, rather than supply Plaintiff with opinions from its experts before challenging the advertising, Defendant made clear that it was simply going to rely upon an unconstitutionally vague "competent and reliable scientific evidence" standard to assert its position that the Sea Vegg™ and Flex Protex™ advertisements violate Sections 5 and 12 of the FTC Act. Using this subjective standard, Defendant asserted that if Plaintiffs did not abandon their Sea Vegg™ and Flex Protex™ advertisements, they would take whatever action necessary to control *all* future speech by Plaintiffs and effectively shut the Plaintiffs' business down.

28. Instead of following its procedures as set forth in the FTC Act, the FTC has chosen to attack the Sea Vegg™ and Flex Protex™ advertising by again seeking the appointment of a receiver to take over Plaintiffs' operations, oversee all advertising in connection with the Sea Vegg™ and Flex Protex™ products, and "review and approve" all future advertising for any

other dietary supplements that might be marketed by Plaintiffs *before* such advertising is allowed to be disseminated. The receiver proposed by the FTC as the gatekeeper of Plaintiffs' speech is not an expert in medicine or dietary supplements, but rather is an accountant with expertise only in the winding up of corporate affairs and liquidating companies. Not only would the receiver impose a clear prior restraint on Plaintiffs' protected commercial speech in violation of their rights under the First Amendment, the receiver would also accomplish Defendant's main goal: shutting the Plaintiffs' operations down completely.

29. Upon information and belief, the FTC has also contacted a number of major media outlets, notifying them of the FTC's litigation with Plaintiffs and warning them that in their view the advertising for Sea Vegg™ and Flex Protex™, among other products marketed by Plaintiffs, violates the FTC Act. In addition, Plaintiffs also believe that the FTC has coordinated with the Plaintiffs' industry trade association to notify hundreds of additional media outlets that the Sea Vegg™ and Flex Protex™ advertisements are misleading, in an effort to subvert its own procedures and halt the airing of the advertisements without affording Plaintiffs any opportunity to provide substantiation or defend the advertising in an open forum. These direct and indirect contacts by the FTC have resulted in certain media outlets refusing to run Plaintiffs' advertising, and have effected a restraint on Plaintiffs' protected commercial speech without providing them due process.

30. Defendant's most current efforts to restrain the Plaintiffs' rights of free speech are part of a larger pattern of conduct undertaken by Defendant to shut down Plaintiffs' operations entirely. Rather than evaluate each form of speech published by Plaintiffs separately as required under the First and Fifth Amendments, as well as the APA and the FTC's own policies and procedures, Defendant has engaged in a series of acts designed to choke off any and all such

speech *before* it is made, in an admitted effort to stop such speech entirely, whether or not in violation of the FTC's interpretation of its own rules and regulations.

31. In pleadings filed with the court, the FTC has admitted that it is frustrated with the progress of its efforts to suppress entirely Plaintiffs' commercial speech. As a result, Defendant has sought to avoid its regular processes as set forth in the FTC Act, because in their view such processes will "take too much time" and allow Plaintiffs' business operations to continue. In connection with the Flex Protex™ program, the FTC has gone as far as admitting that it has conducted *no* independent scientific research or studies, nor has Defendant consulted with any experts or reviewed the materials in the possession of the Plaintiffs, including well-controlled double-blind studies and related materials. The FTC is therefore seeking alternative means of restraint for the sole purpose of stopping Plaintiffs' protected speech without due process of law.

32. As justification for the FTC's evasion of its own procedures for providing advertisers such as Plaintiffs their due process and violating Plaintiffs First Amendment rights, the FTC has claimed that the Plaintiffs' advertising lacks "competent and reliable scientific evidence," a standard which is undefined and appears to be entirely subjective in the eyes of the FTC. Prior to claiming that such "evidence" does not exist, the FTC *never* requested any such data or evidence from Plaintiffs, leading to the necessary conclusion that they did not review, and had no intention of reviewing, any of these materials prior to applying their arbitrary substantiation standard.

33. In response to the FTC's attempts to block and control all of Plaintiffs' future speech, including the advertising for Sea Vegg™ and Flex Protex™, Plaintiffs offered to provide the volumes of scientific literature, as well as expert testimony in support of the claims in the advertising. Plaintiffs also offered to submit the advertising to the FTC for review by the FTC staff, in an effort to understand what aspects of the advertising were problematic in light of the

submitted substantiation. Plaintiffs offered these steps in an effort to assure that accurate information was communicated. The FTC has repeatedly rejected these offers by Plaintiffs, and never reviewed *any* of these materials before seeking to restrain all speech by Plaintiffs. The conclusion is inescapable that the FTC has determined that any advertising by Plaintiffs is *de facto* violative of the law, regardless of the content or support.

34. Worse still, it appears that the expert eventually retained by the FTC to review the Sea Vegg™ advertisements agrees with many of the conclusions of Dr. Kraan and the other experts consulted by Plaintiffs, and also agrees that sea vegetation may have many of the claimed health benefits discussed in Plaintiffs' advertising for the product. It is likely that the FTC's "experts" will equally agree with the scientific literature submitted in connection with Flex Protex™. Nonetheless, for the sake of expediency, the FTC staff has unilaterally determined that such testimony and literature does not, and cannot, meet its vague definition of "competent and reliable scientific evidence."

35. Defendant unconstitutionally determines on a case-by-case basis the requirements of its arbitrary "competent anti reliable scientific evidence" standard. Thus, an advertiser is not provided a means to avoid unlawful (or mistaken) prosecution under the Defendant's existing regulatory approach. Moreover, as exemplified in this case, the FTC's vague standard of conduct allows the FTC to selectively target certain companies and individuals for enforcement without providing a unified standard of conduct with which such targeted parties can defend themselves. Thus, the FTC's "standard" provides it the means to violate its selective target's civil rights.

36. Defendant's interpretation and implementation of Sections 5 and 12 of the FTC Act to require so-called "competent and reliable scientific evidence," is a vague regulatory scheme designed to suppress protected commercial speech. Defendant's regulatory scheme is

unlawful because its “competent and reliable scientific evidence” doctrine: (a) violates the due process rights of advertisers, including Plaintiffs’ due process rights under the Fifth Amendment; (b) operates as a “prior restraint” on protected commercial speech in violation of the First Amendment; (c) is not the “least restrictive” alternative to regulate commercial speech under Sections 5 and 12 of the FTC Act; (d) is an arbitrary, capricious and otherwise unlawful method of protecting consumers; and (e) is contrary to the intent of Congress as expressed in DSHEA and established case law.

37. By refusing to adopt clear requirements for advertisers, and refusing to provide advertisers with an outlet for protected speech that does not meet Defendant’s vague substantiation standard, Defendant has determined it is more important to suppress and restrain accurate information supported by credible evidence than to adopt clear standards for such speech, in violation of the teachings of *Pearson v Shalala*, 164 F.3d 650 (D.C. Cir. 1999). The obligations of Defendant to provide clear standards under Sections 5 and 12 are rooted in the congressional and constitutional precepts that disclosure of accurate – although possibly controversial – information to consumers is more likely to enhance consumer welfare than the government’s suppression of lawful commercial speech.

38. Defendant fails to advance the objectives of Sections 5 and 12 of the FTC Act by using its arbitrary and vague substantiation standard to engage in selective attempts to suppress all speech by certain targeted individuals and entities, and circumvent its own congressionally mandated processes and procedures under the FTC Act for the sake of expediency. Defendant has utilized its unconstitutional standard as part of a pattern of conduct whose sole aim is to shut down Plaintiffs’ operations entirely, in an effort to restrain and suppress all of Plaintiffs’ speech, whether or not in violation of any law. These acts are all in violation of Plaintiffs due process rights guaranteed by the United States Constitution.

39. In addition to the suppression of Plaintiffs' protected speech, Defendant's application of an arbitrary and capricious, self-imposed and interpreted regulatory scheme governing dietary supplements is imposing an unreasonable barrier limiting or slowing the flow of safe products and accurate information to consumers. This barrier is directly contrary to the congressional findings in Dietary Supplement Health and Education Act ("DSHEA") and the teachings of *Pearson*. Defendant's prior substantiation requirements themselves create an unconstitutional prior restraint on speech, unlawfully shifting the burden to advertisers to surmise what is adequate substantiation *before* they can engage in commercial speech without fear of prosecution. Absent a defined standard and uniform enforcement, the FTC's arbitrary and vague requirements necessarily chill protected speech.

40. Defendant has provided no guidance as to what disclaimers are sufficient in the event that an advertiser possesses and relies upon significant substantiation in connection with health-related claims, but the FTC disagrees with the advertiser's evidence. In effect, the FTC has concluded that if it disagrees with an advertiser's substantiation, *no* amount of disclaimers are sufficient. This conclusion flies in the face of *Pearson* and its progeny.

41. Given the nature and finality of Defendant's demands and the imminent threat to Plaintiff's First Amendment rights to commercial speech, Plaintiffs seek a declaratory judgment that Defendant cannot lawfully suppress Plaintiff's advertised claims for Sea Vegg™ and Flex Protex™ under Sections 5 and 12 of the FTC Act on the basis of the unconstitutionally vague "competent and reliable scientific evidence" doctrine. Plaintiffs also seek a declaratory judgment that the FTC cannot deny Plaintiffs their due process and First Amendment rights by suppressing all future speech while avoiding the procedures required under the FTC Act for challenging commercial speech.

42. Plaintiff possessed a reasonable basis to make the product claims in the Sea Vegg™ and Flex Protex™ advertisements, and engages in significant efforts to assure that it possesses a reasonable basis for all of its other advertising. Consequently, the United States Constitution protects Plaintiffs' commercial speech and prohibits Defendant from suppressing Plaintiffs' advertised claims based on a Constitutionally vague "competent and reliable scientific evidence" standard.

43. Defendant cannot seek to suppress and restrain all future commercial speech by Plaintiffs, nor can the Defendant lawfully institute law enforcement action against Plaintiff based upon an unconstitutionally vague advertising substantiation standard for the reasons set out below, including without limitation: (1) the First and Fifth Amendments, and APA, prohibit Defendant from trying to suppress Plaintiffs' commercial speech with an unconstitutionally vague standard of liability; and (2) the First and Fifth Amendments, and APA, prohibit Defendant from suppressing all of Plaintiffs' future commercial speech without following the FTC's procedures on a case-by-case basis, where less restrictive alternatives are available.

44. A preliminary and permanent injunction should issue to prohibit Defendant from enforcing its unconstitutionally vague "competent and reliable evidence" standard against Plaintiff and require Defendant to adhere to the Constitution and its own procedures in challenging Plaintiffs' protected commercial speech.

COUNT I

Declaratory Relief and Damages for Violation of the Due Process Clause of the Fifth Amendment

45. Plaintiffs incorporate the preceding paragraphs by reference, as though fully set forth in this paragraph.

46. Defendant has sought to prohibit all commercial speech by the Plaintiffs, through direct and indirect contacts with third parties, and through the appointment of a receiver with the

power to control all such speech. Plaintiffs cannot be deprived of their exercise of a fundamental liberty, the right to commercial speech, without due process of law.

47. Plaintiffs' commercial speech is a liberty and property interest under the Due Process Clause of the Fifth Amendment to the U.S. Constitution. It is speech that Plaintiff desires to communicate to consumers, that may lead consumers to purchase dietary supplement products that Plaintiff sells to consumers. Plaintiffs' liberty and property interests may not be deprived without due process of law.

48. Defendant's attempts to suppress all future protected speech by the Plaintiffs violate Plaintiff's rights of due process because Defendant's basis for suppressing such speech, and undefined and arbitrary "competent and reliable scientific evidence" standard is unconstitutionally vague. Moreover, Defendant's implementation of its unconstitutional standard as to Plaintiffs would delegate legislative authority to third parties with unlimited power to suppress speech under this undefined and unconstitutionally vague standard.

49. Before seeking to suppress all future speech by Plaintiff under the so-called "competent and reliable scientific evidence" standard, Defendant has refused to advise Plaintiff in clear and defined manner what specific quantum of evidence is required under the law, or why Plaintiffs' commercial speech does not satisfy Defendant's unconstitutionally vague standard. Defendant has then sought to use the Plaintiffs' alleged violation of this unconstitutionally vague standard to interfere with and shut down Plaintiffs' business entirely.

50. Defendant refuses to promulgate through its notice-and-comment rulemaking procedures any rule that: (a) Sections 5 and/or 12 of the FTC Act requires "competent and reliable scientific evidence"; (b) defines this advertising substantiation standard; or (c) adopts any concrete objective criteria to determine what the standard requires.

51. Defendant refuses to adopt any prescreening procedure to determine whether proposed claims satisfy Sections 5 and 12 of the FTC Act and provide a means to correct a perceived risk of confusion with qualifications and disclaimers, before Defendant threatens to bring, and brings, coercive law enforcement action, including action to suppress all future commercial speech, under its advertising substantiation program.

52. In other words, Defendant unlawfully refuses to adopt a quantifiable and measurable substantiation standard for dietary supplements, either by substantive or procedural rule. In addition, Defendant has created a regulatory scheme that unlawfully relies upon subjective analysis by non-governmental third party "consultants" and "experts" who have been shown to be no more qualified than the experts relied upon by Plaintiffs. These experts then opine, with the force of law, on whether the advertiser's proffered scientific support for an alleged product claim constitutes "competent and reliable scientific evidence." Although Congress lawfully may delegate to the federal judiciary the power to interpret and apply standards for commercial speech on a case-by-case basis, it is unconstitutional for Defendant to rely on third party consultants with professed expertise in scientific evidence, whose subjective opinions are then used to suppress commercial speech of which Defendant does not approve. This conduct is especially egregious where no guidance is provided about whether and what type of disclaimers may suffice to prevent confusion or implied deception.

53. It is also unlawful and a violation of the Plaintiffs due process rights under the First and Fifth Amendments for Defendant to use its unconstitutionally vague substantiation protocol to selectively target Plaintiffs, seek to put them out of business and suppress all of their future commercial speech, regardless of content, the reasonableness of that speech or the scientific substantiation for that speech.

54. As a result of the Defendant's violation of the Fifth Amendment, Plaintiffs are being threatened with imminent and unlawful federal government action by the Defendant. Plaintiffs have also suffered injury to their business and damages.

55. Defendant will continue to cause the same or similar harm to Plaintiff if the Court does not enjoin Defendant from doing so. Therefore, a declaratory judgment enjoining Defendant unlawful conduct is appropriate, necessary, and in the public interest. Plaintiffs are also entitled to damages in an amount to be determined at trial.

COUNT II

Declaratory Relief and Damages for Violation of the Right of Free Speech Under the First Amendment

56. Plaintiffs incorporate the preceding paragraphs by reference, as though fully set forth in this paragraph.

57. Commercial speech is protected under the First Amendment of the United States Constitution.

58. The Sea Vegg™ and Flex Protex™ advertisements, among other advertising by Plaintiffs, constitutes protected commercial speech.

59. Plaintiffs are entitled to the full protection of the First Amendment of the United States Constitution against Defendant's efforts to suppress completely their commercial speech.

60. Plaintiff's rights under the First Amendment are violated because: Defendant has engaged in a concerted and targeted effort to shut down Plaintiffs' operations to suppress all future commercial speech; (b) Defendant has not and cannot articulate a "compelling" reason why it must adhere to its vague substantiation standard, without any procedures protecting the First Amendment rights of advertisers from mistaken or unlawful agency action; (c) Defendant cannot prove that the burden it has imposed and seeks to impose on Plaintiff's commercial speech is "necessary" to protect consumers from confusion; and (d) Defendant cannot prove that

its regulatory scheme governing dietary supplements is the “least restrictive” means to protect consumers from confusion.

61. Defendant’s acts and practices cannot survive even intermediate level scrutiny. Defendant cannot articulate a “substantial” (let alone a “legitimate”) reason for its adherence to the unconstitutionally vague “competent and reliable scientific evidence” standard, which has no procedural safeguards and is being used selectively by the FTC to target those individuals and entities that may criticize the agency and its procedures. Defendant cannot prove that its conduct advances its stated interest under Sections 5 and 12 of the FTC Act in a “direct or material” way. Defendant cannot prove that there is not a “far less restrictive” way to protect consumers from confusion other than its selective enforcement of its vague and arbitrary substantiation protocol.

62. As a result of Defendant’s violation of the First Amendment, Plaintiff has been subject to and is being threatened by Defendant with unlawful federal government action. Plaintiffs have also suffered injury to their business and damages.

63. Defendant will continue to cause the same or similar harm to Plaintiffs if the Court does not enjoin Defendant from relying on the unconstitutionally vague “competent and reliable scientific evidence” standard. Therefore, Plaintiffs seek both a preliminary and permanent injunction against Defendant. Plaintiffs are also entitled to damages in an amount to be determined at trial.

COUNT III

Declaratory Relief for Violation of the Administrative Procedure Act

64. Plaintiff incorporates the preceding paragraphs by reference, as though fully set forth in this paragraph.

65. The APA requires Defendant to define its advertising substantiation standard before threatening advertisers with law enforcement action under Sections 5 and/or 12 of the

FTC Act. Defendant cannot circumvent the rulemaking process through *ad* and *post hoc* enforcement of an unconstitutionally vague benchmark of “competent and reliable scientific” evidence. Rather, if the Defendant seeks to impose a substantive benchmark of “competent and reliable scientific evidence” under its “reasonable-basis” test, it first must define that benchmark with specificity.

66. Pursuant to the APA (*e.g.* 5 U.S.C. § 706(2)(A)). Defendant may not pursue an official action that is arbitrary, capricious, an abuse of discretion, or is contrary to law.

67. Whether by substantive or procedural rule, the APA requires Defendant to define its advertising substantiation standard before threatening advertisers with law enforcement action under Sections 5 and/or 12 of the FTC Act.

68. Defendant has violated the APA because what constitutes “competent and reliable scientific evidence” is not sufficiently defined. Defendant has not adopted concrete principles to bind its actions when investigating and prosecuting advertisers under its unconstitutionally vague advertising substantiation program. Defendant has failed to adopt and present discernible and consistent evaluative criteria for reviewing claims supported by credible scientific evidence. Defendant’s arbitrary regulation of commercial speech, by the very nature of Defendant’s unlawful program, has been subject to little or no meaningful judicial review.

69. Defendant has also violated the APA by admittedly avoiding its own procedures in its efforts to shut down Plaintiffs’ business and suppress *all* future commercial speech by Plaintiffs.

70. As a result of the Defendant’s violations of the APA, Plaintiffs have been subject to and currently are threatened with imminent and unlawful agency action. Plaintiffs have also suffered injury to their business and damages.

71. Defendant will continue to cause the same or similar harm to Plaintiffs if the Court does not enjoin Defendant from doing so.

COUNT IV
Injunctive Relief

72. Plaintiffs incorporate the preceding paragraphs by reference as though fully set forth in this paragraph.

73. Pursuant to Federal Rule of Civil Procedure 65, Plaintiffs are entitled to the entry of a preliminary injunction enjoining Defendant's activities in connection with Plaintiffs' advertising for Sea Vegg™ and Flex Protex™, pending conclusion of this action for declaratory relief.

74. Plaintiffs already have suffered and will continue to suffer irreparable harm as a result of Defendant's unconstitutional and unlawful acts. If Defendant's conduct is permitted to continue against Plaintiff, Plaintiff will suffer further irreparable harm.

75. Absent injunctive relief Defendant is likely to continue to injure Plaintiff by imposing its vague and constitutionally infirm advertising substantiation requirement in connection with existing and future advertising, as well as by evading its required procedures under the APA.

76. In balancing the harm suffered by Plaintiffs should this Court not enter an injunction prior to resolution of the declaratory judgment action, as against the interests of Defendant, the interests of Plaintiffs substantially outweigh Defendant's interests.

77. For the specific reasons discussed above, including the presumption of ongoing irreparable harm from constitutional violations and general constitutional disfavor of restrictions on commercial speech, especially a complete restriction on all such speech, overly broad agency

action, and deprivation of liberty and property without due process of law, the public interest is served by entry of the injunction.

78. There is a substantial likelihood that the Plaintiffs will prevail in this action for declaratory judgment thereby precluding Defendant from enforcing its unconstitutionally vague, overly restrictive, arbitrary and capricious, and selective regulatory scheme against them.

79. The constitutional questions in this case are so significant, and the apparent abuse of power by the FTC so serious, that an injunction to maintain the *status quo* is critical.

RELIEF REQUESTED

WHEREFORE, Plaintiffs request that judgment enter as follows:

- I. That the Court issue a Preliminary and Permanent Injunction restraining Defendant from preventing Plaintiffs' advertising claims about its product Sea Vegg™ and Flex Protex™ until Defendant adequately clarifies and defines its "competent and reliable scientific evidence" standard;
- II. That the Court render a Declaratory Judgment declaring that Defendant's current standards and protocols for demonstrating advertising substantiation suppress speech and are void for vagueness, and therefore are invalid and unconstitutional under the First and Fifth Amendments of the United States Constitution;
- III. That the Court issue a Preliminary and Permanent Injunction restraining Defendant from evading its own procedures for reviewing Plaintiffs' advertising and requiring Defendant to provide Plaintiffs the opportunity to submit substantiation prior to any restraint on their commercial speech;
- IV. That the Court retain jurisdiction of this matter for the purpose of enforcing the Court's Order;
- V. That the Court award Plaintiffs damages in an amount to be determined at trial;

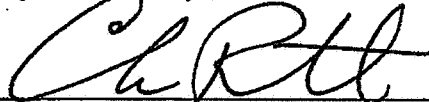
- VI. That the Court award Plaintiffs their costs and expenses of this action, including their reasonable attorneys' fees;
- VII. That the Court grant such other and further relief as it deems appropriate.

JURY DEMAND

Plaintiffs demand a jury trial on all claims for relief and all issues so triable.

DIRECT MARKETING CONCEPTS, INC., ITV
DIRECT, INC. and DONALD BARRETT,

By their attorneys,



Peter S. Brooks, BBO #058980

Christopher F. Robertson, BBO #642094

Susan W. Gelwick, BBO #567115

SEYFARTH SHAW LLP

World Trade Center East

Two Seaport Lane, Suite 300

Boston, MA 02210-2028

Telephone: (617) 946-4800

Telecopier: (617) 946-4801

Of Counsel:

Michael Sciucco, BBO #659651
Direct Marketing Concepts, Inc.
55 Cherry Hill Drive
Beverly, Massachusetts 01915
(978) 299-2200

Dated: September 23, 2005